NEBRASKA STATE BOARD OF EDUCATION MEETING NOTIFICATION AND AGENDA

Meeting Date:	**Friday, January 9, 2026 9:00 AM**
Meeting Title:	**State Board of Education Meeting Notification and Agenda**
Location:	**NDE Office Building** **Board Room** **500 South 84th Street** **Lincoln, NE 68510**
Agenda:	**Except for emergency items added at the time of the meeting, the agenda will not be changed less than 24 hours prior to the start of the meeting and any changes will be immediately posted on the website.** **The Board will attempt to adhere to the sequence of the published agenda, but reserves the right to adjust the order of items if necessary and may elect to take action on any of the items listed.**
Interpreter:	**If you need interpreter services or other reasonable accommodations, please contact the Nebraska Department of Education at (402) 471-5059 five (5) days prior to the meeting to coordinate arrangements.**
Website:	**An electronic version of the agenda and support materials are available on the State Board of Education's Agenda page: www.education.ne.gov/stateboard/state-board-agendas/**
Lunch:	**On Friday, January 9, 2026, the State Board of Education may also take a recess for lunch. The Board may resume work on the agenda at approximately 1:00 p.m.**

1. CALL TO ORDER (The Board May Take a Recess)
   President

   1.1. Roll Call
   President

   1.2. Pledge of Allegiance
   President

   1.3. Announcement of the Placement of the Open Meetings Act Information
   President

2. SPECIAL PRESENTATIONS
   President

3. COMMISSIONER'S REPORT
   Commissioner Maher

3.1. Agenda Overview and Consent Agenda Process
Commissioner Maher

3.1.A. Commissioner's Recommendations and Items to be Removed from Consent Agenda
Commissioner Maher

3.2. Introduction of Sarah Hardin, 2026 Nebraska Teacher of the Year, High School Science Teacher at Mullen High School, Mullen, Nebraska
Sarah Hardin, 2026 Nebraska Teacher of the Year, High School Science Teacher at Mullen High School, Mullen

3.3. Nebraska Literacy and CLSD Update
Jamie Cook, Deputy Stavem, and Victoria Katzberg

4. PRESIDENT'S REPORT
President

5. PUBLIC COMMENT PERIOD
President

5.1. Public Comment

5.2. Written Public Comment (None Submitted)

6. CONSENT AGENDA
President

6.1. Board Member Out-of-State Travel Approval

6.2. Committee Appointments

6.3. Contract Approvals

6.3.A. Amend Contract to Support Teams for Improvement to Increase Math and Literacy Outcomes (BF.032025.003)
Shirley Vargas

6.4. Grant Approvals

6.5. Lease Approvals

6.6. Minutes of the Previous State Board of Education Meeting

6.7. Miscellaneous Approvals

7. STANDING COMMITTEE REPORTS
   President

   7.1. Executive Committee
        President

   7.2. Budget and Finance Committee
        Committee Chair

        7.2.A. Monthly Board Travel Expense Reports

        7.2.B. Action Item: Contract for Federal IDEA and Early Childhood Data Application Development (BF.102025.002)

        7.2.C. Action Item: Authorize the Commissioner to Contract for the Nebraska Inclusive Systems Capacity Project (BF.122025.002)

        7.2.D. Action Item: Authorize the Commissioner to Approve the 2025-26 Trust Fund Budget for the Nebraska Center for the Education of Children who are Blind or Visually Impaired (NCECBVI) (BF.122025.001)

   7.3. Planning and Evaluation Committee
        Committee Chair

        7.3.A. Action Item: Community Achievement Plan (CAP) of the Learning Community of Douglas and Sarpy Counties (PE.082025.003)

   7.4. Rules and Regulations Committee
        Committee Chair

        7.4.A. Report On Rules

        7.4.B. Action Item: Proposed Revision of Rule 13 (92 NAC 13) Regulations and Procedures for Exempting Schools For Which Parents Elect Not To Meet Legal Requirements for School Approval and Accreditation (RR.102025.001)

        7.4.C. Action Item: Proposed Revision of Rule 51 (92 NAC 51) Regulations and Standards for Special Education Programs (RR.092025.003)

8. ADDITIONAL BUSINESS
   President

9. INFORMATION ITEMS AND REPORTS
   President

   9.1. Contracts Approved by Commissioner

9.2. Grants Approved by Commissioner

10. GOOD OF THE ORDER
    This section of the agenda is intended for Board members to offer informal observations of the work of the State Board. Board members may make brief announcements about attendance at future events for the purpose of informing other Board members. No business or motions, or suggested actions of the Board may be offered at this point in the agenda; nor should Board members engage in substantive discussion about other agenda items or introduce new agenda items.
    President

11. ADJOURNMENT
    President

    The next regularly scheduled meeting of the State Board of Education will be held on Friday, February 6, 2026, at 9:00 a.m. in Lincoln, Nebraska. As needed, a work session will be held on Thursday, February 5, 2026 in Lincoln, Nebraska.
    The agenda contains a list of subjects known at the time of its distribution on December 23, 2025. A copy of the agenda reflecting any changes will be available for public inspection during the normal business hours in the Office of the Commissioner of Education and on the State Board of Education's Agenda page: www.education.ne.gov/stateboard/state-board-agendas/. *Except for items of an emergency nature, the agenda will not be changed later than 24 hours before the scheduled commencement of the meeting.*

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Lincoln, NE 68509-4987
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PROPOSED AGENDA ITEM RATIONALE

DATE: December 17, 2025

TO: Dr. Brian L. Maher
Commissioner of Education

FROM: Jamie Cook, Literacy Officer, Victoria Katzberg, Literacy Program Specialist, Dr. Jane Stavem, Deputy Commissioner

PROPOSED AGENDA ITEM: Nebraska Literacy and CLSD Update

AGENDA ITEM TYPE (contract/grant/rule/program/other): Other

RATIONALE/BACKGROUND INFORMATION:
The Nebraska Department of Education (NDE) is leading statewide literacy efforts aligned to Nebraska Revised Statute §79-2607 and grounded in evidence-based reading instruction. The Nebraska Literacy Project provides the statewide framework for this work, aligning professional learning, educator preparation, instructional support, data use, and family engagement to improve literacy outcomes and support proficient, lifelong readers.

The Comprehensive Literacy State Development (CLSD) grant serves as a key accelerator of this work by providing funding for evidence-based professional learning, coaching, instructional support, and family literacy. To date, CLSD funds have been awarded to 46 subgrantees, representing approximately two-thirds of the state and impacting more than 200,000 children. Since October 1, marking the start of federal fiscal year two of the CLSD grant, subgrantees have focused on deepening implementation, with early data indicating promising instructional shifts and initial gains for all student populations, supporting the development of aligned and sustainable literacy systems statewide.

PROPOSED BOARD MEETING (MONTH/YEAR): January 2026

ESTIMATED COST:

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: *(--e.g., Federal, State)*

- New or Renewal:

- If renewal, date of first approval:

FOR NEW CONTRACTS OR OTHER CONTRACTS REQUIRING PROCUREMENT:

- Indicate the method of procurement:

- Rationale for method of procurement:

- Rationale for contractor selection:

FOR GRANT SUBAWARDS:

- Describe the grantee selection process:

**Updated 08.15.2023*

NEBRASKA
DEPARTMENT OF EDUCATION

Nebraska Literacy Update

January 9, 2026

Nebraska Literacy Vision & Goals

To **foster** a **culture of proficient** and **lifelong readers** in Nebraska and **unlock student potential** for **learning**, **earning**, and **living** through a **focus on evidence-based reading instruction.**

Goals:

1. **Increase third-grade proficiency on NSCAS-ELA to 75% by 2030.**
2. **Increase the % of Nebraska K-3 students** who **meet** the **Nebraska Reading Improvement Act** approved **assessment thresholds**.
3. Ensure **100% of Nebraska educator preparation programs** are **implementing evidence-based instruction for teachers** grounded in the science of reading.

Nebraska Revised Statute § 79-2607

Nebraska Revised Statute (NRS) § 79-2607 requires the **NDE to develop and implement a professional learning system** designed to provide sustained professional learning in evidence-based reading instruction.

- Intended for **educators who work with children from age four through third grade in approved or accredited schools.**
- As well as **teachers employed by early childhood education programs approved by the State Board of Education**.
- The **system must** also **include information and strategies to work with local family literacy centers**.

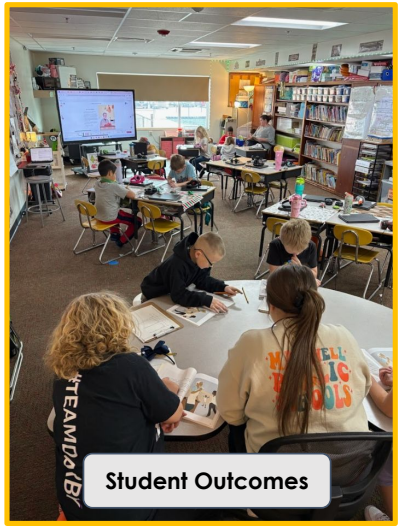
Responsibilities of Approved or Accredited Schools and Early Childhood Education Programs approved by State Board of Education

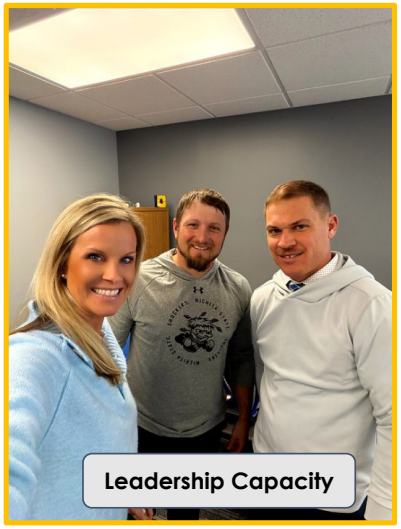
1. **Ensure that teachers of children from age four through third grade are aware of the professional learning system**; and

2. **Ensure that these teachers receive adequate training in evidence-based reading instruction,** so they are equipped to effectively teach reading.

Comprehensive Literacy State Development (CLSD) Grant

Comprehensive Literacy State Development

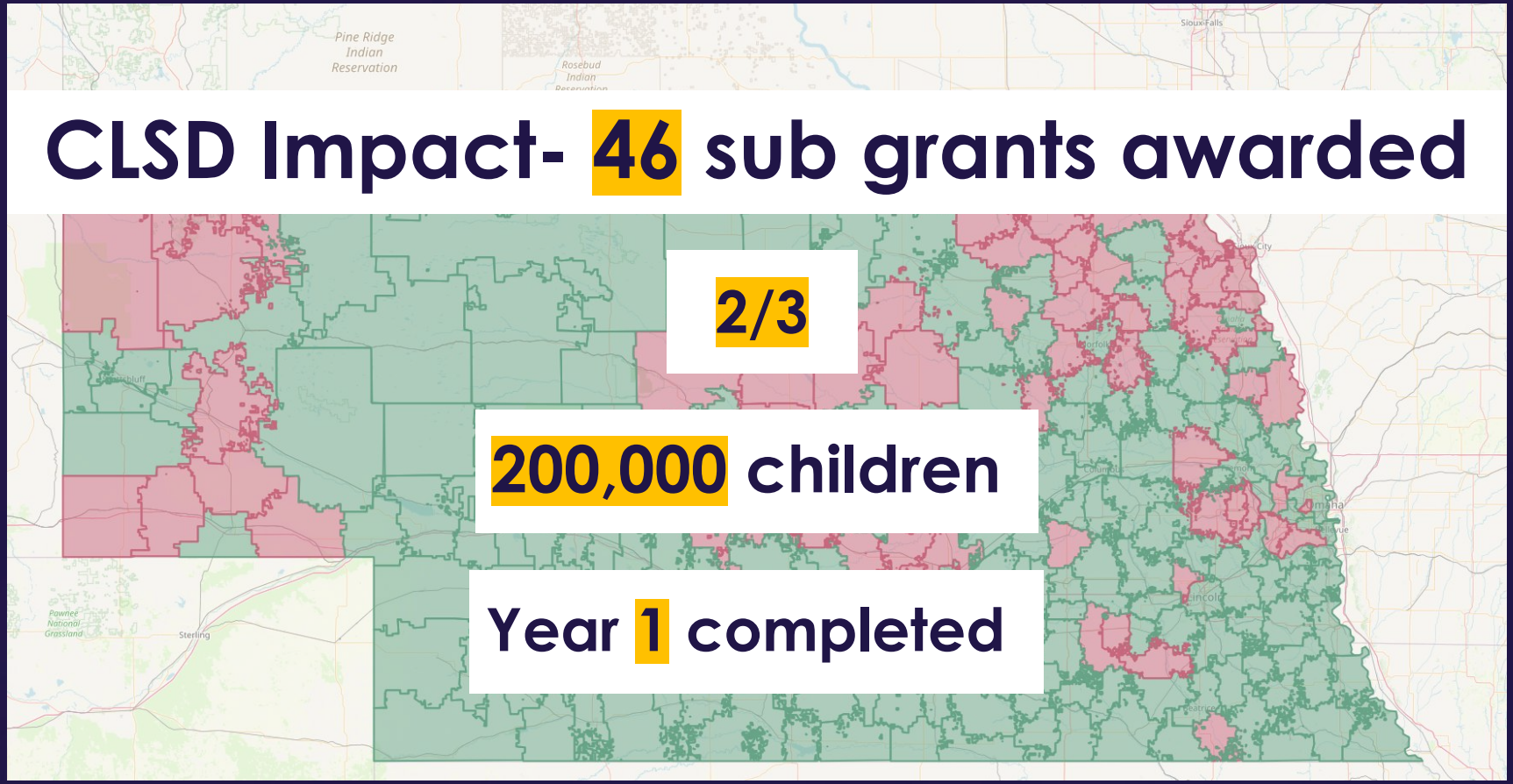




CLSD Timeline

- **October 1, 2024:** NDE Awarded CLSD Grant (Year 1)
- **October-April 2025:** Building Infrastructure for the CLSD grant process
- **April 4th:** Nebraska CLSD Request for Application (RFA) Content Release Date
- **April 15th:** Nebraska CLSD Application Opened in GMS
- **June 2nd:** Applications due
- **June-July:** CLSD Application Evaluation Period
- **July 23rd:** Submit Intent to Award Agenda Item to the Nebraska State Board of Education
- **August 11th:** State Board of Education approved 46 sub-awards
- **August 11-Sept. 30th:** Year 1 Period of Performance- Awarded Grantees
- **October 1, 2025:** Year 2 Period of Performance

CLSD Impact- 46 sub grants awarded

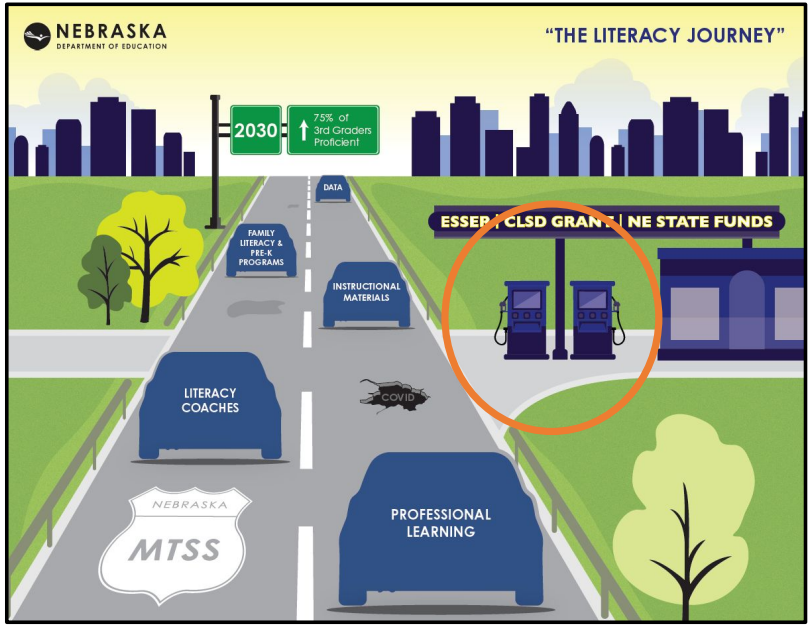


Fueling Nebraska's Literacy Journey

Evidence-based Literacy Practices

Capacity-building

Focus; results-driven



Nebraska Department of Education

Literacy Comprehensive Needs Assessment (L-CNA)

ELIGIBLE ENTITY NA	
DATE COMPLET	
NAME(S) AND ROLE(S) COMPLETED THIS L	

A. Literacy plan & vision

- Leadership collaborates with staff to enact the vision for excellent literacy instruction, which is grounded in the Science of Reading. AQ CNA (p. 44)/NeMTSS SA #17-18
- Leadership ensures all students have meaningful additional support at Tiers 2/3 per Nebraska's NeMT 43)/NeMTSS SA #5-6, 17-18, 21
- Leadership identifies patterns and trends to guide based literacy instruction and that align with the dis and faculty growth. AQ CNA (p. 3-4, 43-44)NeMTSS
- Leadership aligns literacy goals and other contin district's vision for excellent literacy instruction. AQ C 17-18

insert text

B. Staff engagement

- Leadership ensures all instructional staff receive h professional learning to effectively support evidenc instruction. AQ CNA (p. 42)
- Leadership works to establish and use common l understandings related to literacy and evidence-b
- Leadership challenges current practices that are based reading, (i.e. three-cueing methods). AQ CN
- Leadership provides for all teachers curriculum-b learning (see pg. 12) grounded in evidence-based structured literacy approaches. AQ CNA (p. 23)/Ne

ESSENTIAL ELEMENT 2

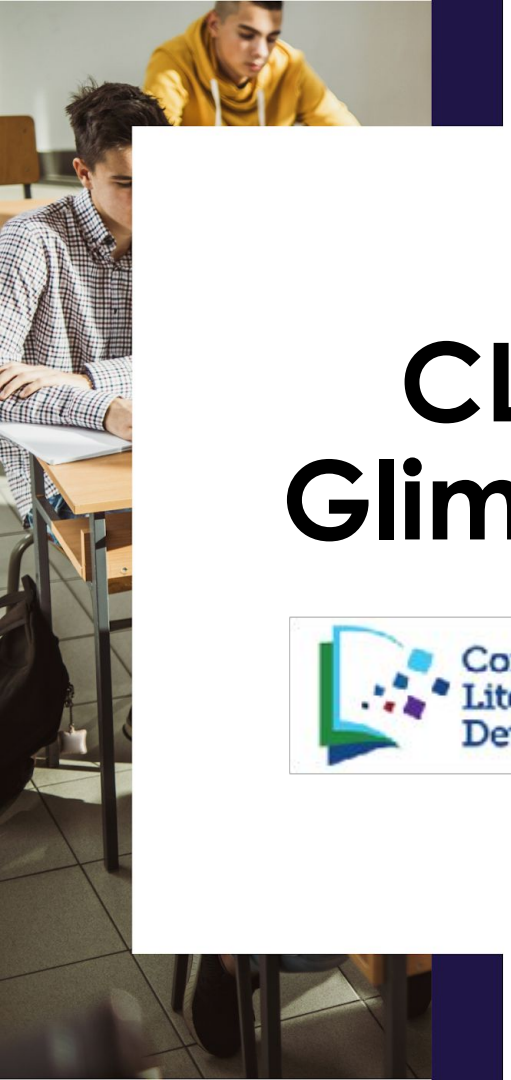
The comprehensive literacy plan coherently aligns standards, curriculum, instruction, materials, and academic interventions, ensuring all students have access to effective, meaningful, affirming, grade-level, Tier 1/core learning experiences.

Supporting Evidence

insert text

A. Core literacy practices

- The district provides locally-developed, comprehensive, guaranteed & viable ELA literacy curricula* for all grade levels. *see Definitions AQ CNA (p. 11)/NeMTSS SA #5-6, 21
- The district has a clear plan for the effective implementation of ELA standards, as outlined in Nebraska's Content Area Standards Implementation Framework. AQ CNA (p. 11)/NeMTSS SA #21
- Per recommendations in Nebraska's 2021 College and Career Ready Standards for English Language Arts (pg. 10), district literacy curricula* ensure students develop proficiency and independence with a balance of grade-level, complex, knowledge-building literary and informational text types. *see Definitions; AQ CNA (p. 11)/NeMTSS SA #13, 21
- Throughout the district's K-12 literacy curriculum, students are expected to write in a variety of modes for a variety of purposes and audiences across disciplines. NeMTSS SA #13, 21
- Throughout the district's K-12 literacy curriculum, students receive explicit instruction on grammar, usage, and mechanics and have frequent opportunities to engage in recursive writing practices. NeMTSS SA #13, 21
- District curricula include, for all subject areas, robust expectations for student writing, distributed according to recommendations* in Nebraska's 2021 College and Career Ready Standards for English Language Arts (pg. 10). NeMTSS SA #13, 21
- School leaders and staff fully align (100%) EL and content curricula with the Nebraska English Language Proficiency Standards. AQ CNA (p. 12)/NeMTSS SA #21
- K-5 school leaders and staff fully align (100%) EL and content curricula with the Nebraska Early Learning Guidelines AQ CNA (p. 27)/NeMTSS SA #21



CLSD Glimmers

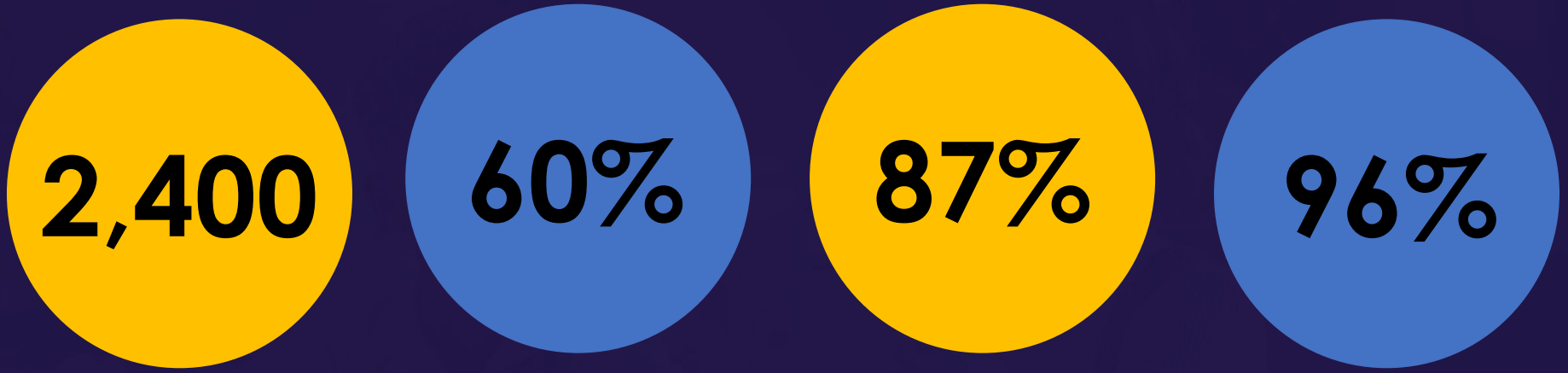
Comprehensive Literacy State Development

November Bi-Monthly Report Highlights

CLSD subgrantees are:

- **Actively implementing evidence-based literacy professional learning**
- **Adopting standards-aligned, evidence-based instructional materials** supported by **curriculum-focused professional learning.**
- **Strengthening literacy through schoolwide improvement efforts**, including alignment with NeMTSS, literacy screeners, and instructional systems.
- **Family literacy is an increasing focus**, expanding opportunities that connect classroom learning to homes and communities.

Professional Learning Reach & Quality



High Quality * Relevant * Immediately Applicable

What District and ESU leaders are saying:

Professional Learning

"We now have **144 secondary educators actively engaged in Science of Reading–aligned professional learning**—a t**ransformational shift** in readiness across the consortium."

"For the first time, ESU districts have a strong base of teachers and administrators completing approved science of reading-aligned training, signaling **meaningful momentum** in educator capacity."

Progress Monitoring

"After just two progress-monitoring cycles, **59** of our **middle-school scholars have already met the growth target**, putting us within reach of our SMART goal months ahead of schedule."

"Our **partnership with our approved provider is strengthening both outcomes and systems. Weekly data meetings, targeted supports, and refined assessment practices** are directly **contributing to meaningful student growth**."

Leadership

"**Leadership coaching has elevated our MTSS processes and strengthened data-driven decision-making**, creating more strategic and collaborative planning across our Middle School and High School teams."

Instructional Change & Early Student Impact

Professional Learning Is Changing Classroom Practice

- Classroom observations show:
  - **10% increase in student engagement** following coaching and training
  - More **explicit instruction** and **increased student participation**
  - **Greater use** of **grade-level text** and **text-dependent questioning**
- Teachers report:
  - Increased **confidence**
  - Clearer **understanding of *how* to apply Science of Reading strategies**
  - Strong value in **modeling and practice with curriculum materials**

Data-Driven Instruction & Student Growth Indicators

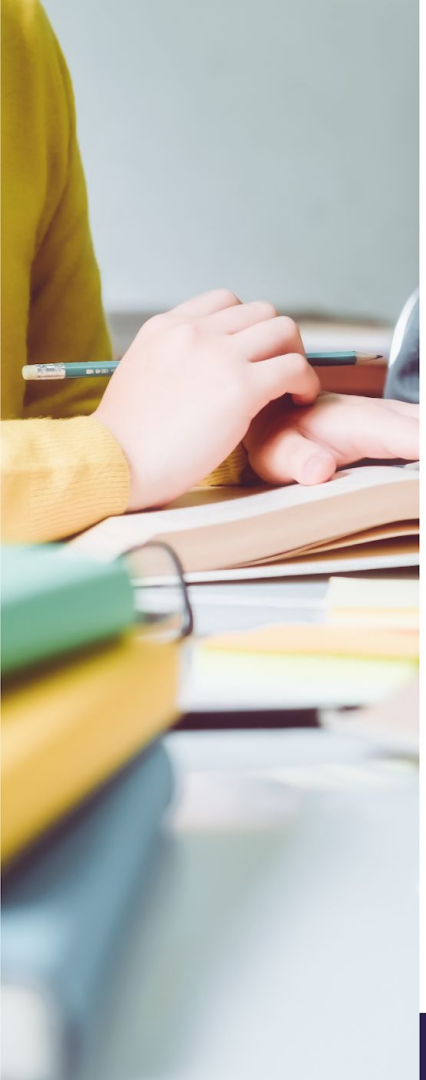
- Foundational literacy data show **early gains in phonemic awareness and letter-sound knowledge**
- Baseline student data established (Pre-K, Grade 3, Grade 8, Grade 11) to monitor progress toward **2030 state literacy goals**

Instructional Change & Early Student Impact

"This progress and these results would not be possible without the CLSD grant."

CLSD in Action: Grade 2 Literacy Results

- **Targeted Prevention:** 30 Grade 2 students (20th–50th percentile) received grade-level fluency support using CLSD funds to prevent future reading risk.
- **Strong Growth:** Average oral reading fluency increased **32 WRC (50 → 82)** in 8 weeks, with **accuracy rising to approx. 98%**—indicating improved automaticity, not just speed.
- **Reduced Risk & Engagement:** Students moved from **Higher Risk to Lower/No Risk** categories, with increased confidence, ownership of learning, and positive family feedback.



Teachers and Literacy Teams Report:

"This work is **transforming more than scores**. Teachers are **reporting new levels of student engagement**, with previously **reluctant learners now asking for help** and **showing greater investment in their progress**."

Student Engagement

"**Engagement increased by 10%** from the first to the second observation cycle; clear **evidence that instructional shifts are taking hold.**"

"More consistent **participation from every student** is directly **supporting stronger literacy skills and accelerating progress toward** our long-term proficiency goals."

Classroom observations show:

"Across classrooms, instruction is largely aligned to grade-level standards, with **students spending significant time reading, writing, and discussing appropriately complex texts.**"

IPG Impact

"Teachers are increasingly **providing affirming, skill-focused feedback**—moving beyond right-or-wrong responses to **support deeper student thinking.**"

"Many lessons showcased **strong use of text-dependent questions and tasks**, helping **students stay grounded in evidence from the text.**"

Family Literacy Reach & Participation

Family Access to Literacy Supports

- **1,085 literacy kits distributed** to families
  - 800 K–2 literacy kits
- Literacy kits designed to support:
  - **Shared reading**
  - **Oral language development**
  - **Early writing and fine-motor skills**
- Classroom-to-home book sharing to encourage family reading routines

Family Literacy Events & Engagement

- Multiple family literacy events held with **strong attendance**
- Another event achieved **100% survey participation** among attending families

Early Engagement Indicators & Family Feedback

53%

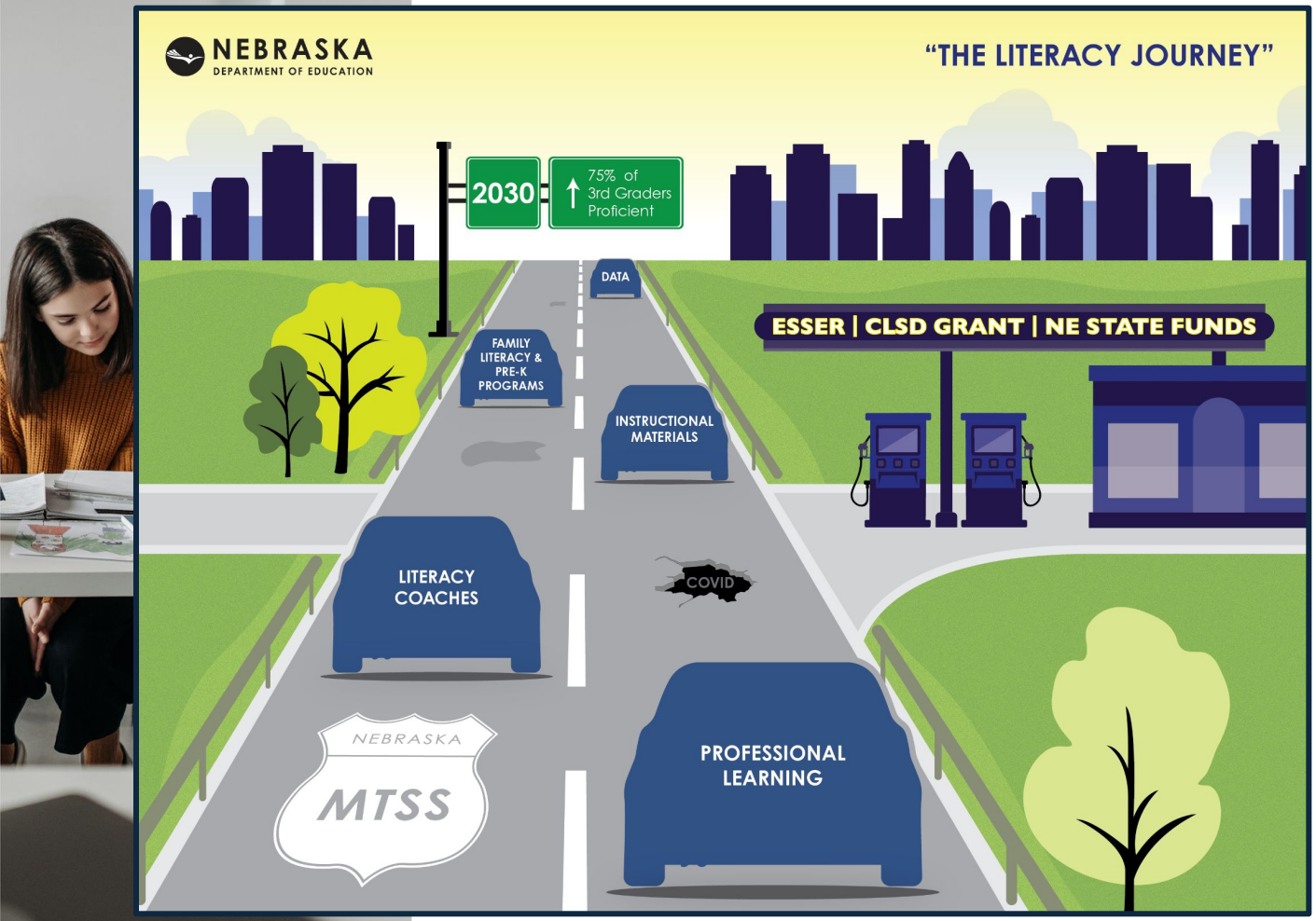
Read at home with their child

44,000

Family Feedback Themes

- **Increased motivation** and **interest in reading** at home
- Strong **appreciation for take-home literacy resources**
- Requests for:
  - More modeling of reading strategies
  - Additional events and continued access to resources
- Overwhelming **affirmation of the value of literacy events**

“Together, our educator and student data tell a clear story: early progress is visible, and continued investment in high-quality, evidence-based professional learning will be essential to strengthen literacy.”



NE Literacy Project

NEBRASKA READS

Leadership
Tenet 1
Professional Learning System
Tenet 2
Curriculum and Teacher Preparation Aligned to Evidence-Based Reading Instruction
Tenet 3
Regional Literacy Coaches
Tenet 4
Data Collections to Evaluate Effectiveness
Tenet 5
Family Literacy and Pre-K Programs

Professional Learning Rubric

Regional Literacy Coaches

Educator Prep Programs

Family Literacy Resources

Updated NebraskaREADS Website

NebraskaREADS

Welcome to NebraskaREADS

NebraskaREADS is your central hub for the Nebraska Department of Education's literacy efforts. Explore state initiatives and resources that support students, educators, and families in building strong reading skills.

Created to meet the needs of all learners, NebraskaREADS fosters early literacy as the foundation for lifelong learning. This work aligns with the Nebraska Reading Improvement Act (2018), which ensures high-quality, evidence-based instruction; individualized support for struggling readers; targeted interventions to help every student reach grade-level proficiency

The Nebraska State Board of Education reinforces these priorities through its Early Literacy Position Statement, promoting statewide efforts to strengthen reading instruction for all students.

The Literacy Journey

The Literacy Journey of having 75% of 3rd graders proficient by 2030 is accelerated by the CLSD Grant and State funds. Covid was a pothole in the journey, but we will arrive through professional learning, literacy coaches, instructional materials, family literacy & pre-K programs, and data driven analysis.

Questions?

Dr. Jane Stavem,
Deputy Commissioner

Victoria Katzberg,
Literacy Program Specialist

Tenet Leads

Tenet 1: Allyson DenBeste, Dr. Shirley Vargas, Jamie Cook

Tenet 2: Dr. Marissa Payzant & Jim Kent

Tenet 3: Amy Rhone, Olivia Alberts, Dr. Larianne Polk

Tenet 4: Lane Carr & Shanshan Deng

Tenet 5: Dr. Zainab Rida & Melody Hobson

Out-State Travel Authorization Reports - January				
Name	**Event Name**	**Date**	**Location**	**Trip Request (i.e. 1st, 2nd, Other)**
Kristin Christensen	Federal Advocacy Fly In	April 26-29, 2026	Washington, DC	*1st (registration paid by NASB) (other expenses paid by NDE)*
Lisa Schonhoff	(NONE)			
Sherry Jones	(NONE)			
Elizabeth Tegtmeier	(NONE)			

Out-State Travel Authorization Reports - January				
Name	**Event Name**	**Date**	**Location**	**Trip Request (i.e. 1st, 2nd, Other)**
Maggie Douglas	(NONE)			
Liz Renner	(NONE)			
Kirk Penner	(NONE)			
Deborah Neary	(NONE)			

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PROPOSED AGENDA ITEM RATIONALE

DATE: December 18, 2025

TO: Dr. Brian L. Maher
Commissioner of Education

FROM: Shirley Vargas, Ed.L.D.
School Transformation Officer

PROPOSED AGENDA ITEM: Amend Contract to Support Teams for Improvement to Increase Math and Literacy Outcomes (BF.032025.003)

AGENDA ITEM TYPE (contract/grant/rule/program/other): Contract

RATIONALE/BACKGROUND INFORMATION:
In June 2025, the NDE launched a request for proposals (RFP), NDERFP250411, to identify vendors for improvement activities aligned to the Improvement Program Fund categories of teacher recruitment and retention, improvement for schools and school districts; improvement in student performance in the subject areas of reading and mathematics, and other improvement areas identified by the state board.

In August 2025, the state board approved $133,000 for District Management Group (DMGroup) to provide support for up to 10 school teams to implement rapid cycles of improvement to increase math and literacy outcomes and provide at least one school with scheduling design support to maximize student and staff time. The cost per team is $12,500 and the cost for scheduling design support is $8,000. Rapid cycles of improvement in education involve supporting and coaching team leaders to identify a specific problem of practice related to student achievement, implement the planned changes, such as strategy or process, study the results quickly, and based on the outcomes, adopt the change, make changes, or start a new cycle.

In November 2025, the accountability results were publicly released, A Quality Education System for Today and Tomorrow (AQuESTT) classifications and designations, resulting in the number of possible schools to participate in improvement activity to increase.

This contract amendment, to add $125,000, will allow for an additional 10 teams to implement rapid cycles of improvement across Needs Support to Improve, Comprehensive Support and Improvement, and Additional Targeted Support and Improvement schools.

The original contract amount of $133,000, combined with this contract amendment of $125,000, totals $258,000. DMGroup will share the results of their work upon completion of the contract.

PROPOSED BOARD MEETING (MONTH/YEAR): January 2026

ESTIMATED COST: $258,000 ($125,000 + $133,000 approved on August 8, 2025)

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: Improvement Grant Funds ($133,000) and General Funds ($125,000)
- New or Renewal: Renewal
- If renewal, date of first approval: 08/08/2025

FOR NEW CONTRACTS OR OTHER CONTRACTS REQUIRING PROCUREMENT:

- Indicate the method of procurement:
- Rationale for method of procurement:
- Rationale for contractor selection:

FOR GRANT SUBAWARDS:

- Describe the grantee selection process: NA

**Updated 07.06.2023*

State Board of Education Work Session and Business Meeting.
Thursday-Friday December 4-5, 2025
Nebraska Department of Education Office Building, State Board Room, 500 S 84th Street, Lincoln, NE 68508
Link to Agenda and Attachments
Link to Video of Meeting December 5, 2025

Publicized notice of the business meeting was given by posting notice on the Department's website and emailed to news media requesting notification, which gave the date, time, and location of the meeting.

STATE BOARD WORK SESSION, Thursday, December 4, 2025, 1:00 p.m.

1. CALL TO ORDER

President Tegtmeier called the meeting to order at 1:00 p.m.

1.1 Roll Call

Roll Call showed the following attendance:

Deborah Neary	Elizabeth Tegtmeier	Kirk Penner
Kristin Christensen (arrived 1:08 p.m.)	Lisa Schonhoff	Liz Renner
Sherry Jones		

Commissioner Maher was also in attendance.

Absent: Maggie Douglas

1.2. President Tegtmeier led the Pledge of Allegiance.

1.3. President Tegtmeier announced the placement of the Open Meetings Act.

2. BUSINESS

2.1. AQuESTT – Statewide School Accountability System

NDE Representatives, Trudy Clark and Derek Ippensen, provided information on the AQuESTT – Statewide School Accountability System.

3. ADJOURNMENT

President Tegtmeier adjourned the meeting at 1:55 p.m.

The State Board of Education will reconvene Friday, December 5, 2025, at 7:30 a.m. at the Nebraska Department of Education Office Building for a joint meeting with the Coordinating Commission for Postsecondary Education, and again at 9:15 a.m. for a regular business meeting at the Nebraska Department of Education Office Building, State Board Room, 500 S 84th Street, Lincoln, NE 68508.

DRAFT

Joint Meeting between State Board of Education and
Coordinating Commission for Postsecondary Education
Friday, December 5, 2025 – 7:30 a.m.

Publicized notice of the business meeting was given by posting notice on the Department's website and emailed to news media requesting notification, which gave the date, time, and location of the meeting.

STATE BOARD OF EDUCATION JOINT MEETING WITH THE COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION, Friday, December 5, 2025, 7:30 a.m.
Nebraska Department of Education Office Building, Rooms 260-262, 500 S 84th Street, Lincoln, NE 68508

2. CALL TO ORDER

President Tegtmeier called the meeting to order at 7:31 a.m.

1.2 Roll Call

Roll Call showed the following attendance:

Elizabeth Tegtmeier Kristin Christensen (arrived 7:33 a.m.) Lisa Schonhoff (arrived 7:38 a.m.)
Liz Renner (arrived 7:41 a.m.) Maggie Douglas Sherry Jones

Commissioner Maher was also in attendance.

Absent: Deborah Neary and Kirk Penner

1.2. President Tegtmeier announced the placement of the Open Meetings Act.

2. BUSINESS

2.1. Welcome from President of State Board of Education

Elizabeth Tegtmeier, President of the State Board of Education provided welcome remarks and introductions of State Board Members.

2.2. Welcome from Chair of the Coordinating Commission for Postsecondary Education

Tim Daniels, Chair of the Coordinating Commission for Postsecondary Education (CCPE) provided welcome remarks and introductions from Commission Members.

2.3. Message from the Commissioner of Education

Brian Maher, Commissioner of Education, spoke to the mission, vision, and projects of the Department of Education, noting the similarities and common work of both entities.

2.4. Message from the Executive Director of the Coordinating Commission for Postsecondary Education

Michael Baumgartner, Executive Director of the Coordinating Commission for Postsecondary Education, spoke to the mission, vision, and projects of the Commission.

3. PRESENTATION

3.1. Tom Harnish, Vice President for Government Relations, State Higher Education Executive Officers Association

Tom Harnish provided a Federal Higher Education Update.

4. ADJOURNMENT

President Tegtmeier adjourned the meeting at 8:35 a.m.

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STATE BOARD OF EDUCATION MEETING, Friday, December 5, 2025, 9:15 a.m.

1. **CALL TO ORDER –** President Elizabeth Tegtmeier called the meeting to order at 9:14 a.m.

   1.1 Roll Call

   Roll Call showed the following attendance:

Deborah Neary	Elizabeth Tegtmeier	Kirk Penner
Kristin Christensen	Lisa Schonhoff	Liz Renner
Maggie Douglas	Sherry Jones	

   Commissioner Maher was also in attendance.

   1.2. President Tegtmeier led the Pledge of Allegiance.

   1.3. President Tegtmeier announced the placement of the Open Meetings Act.

2. **SPECIAL PRESENTATIONS**

   (NONE)

3. **COMMISSIONER'S REPORT**

   3.1. Agenda Overview and Consent Agenda Process

   3.1.A. Commissioner Maher's recommendation and items to be removed from consent agenda

   No items were requested to be removed from the Consent Agenda.

   Commissioner Maher delivered the Commissioner's report.

   3.2. Nebraska Teacher of the Year Final Report

   NDE Representative, David Jespersen, introduced Lindsey Wilson, 2025 Nebraska Teacher of the Year, Bennington Middle School, Bennington, Nebraska, who provided her final report.

   3.3. Nebraska Leads Literacy Initiative

   NDE Representative, Jane Stavem, spoke about the Nebraska Leads Literacy Initiative.

   3.4. Tax Equity and Educational Opportunities Support Act (TEEOSA) Information

   Commissioner Maher spoke about the Tax Equity and Educational Opportunities Support Act (TEEOSA) Information.

4. **PRESIDENT'S REPORT**

   There was no President's report.

5. **PUBLIC COMMENT PERIOD**

   5.1. Public Comment

   There was no Public Comment.

   5.2. Written Public Comment

   There was no Written Public Comment submitted.

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6. CONSENT AGENDA

Motion by Kristin Christensen, second by Liz Renner to approve the Consent Agenda.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

7. STANDING COMMITTEE REPORTS

7.1. **Executive Committee** – Elizabeth Tegtmeier, Chair, reported on the meeting of the Committee.

7.1.A. Action Item: Strategic Plan

Motion by Deborah Neary, second by Kristin Christensen to adopt the 2026-2030 Nebraska Department of Education Strategic Plan.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

7.1.B. Action Item: Adopt the Proposed Board Bylaw and Policy Revisions

Motion by Sherry Jones, second by Kristin Christensen to adopt the proposed Board Bylaw and Policy Revisions.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

7.1.C. Action Item: Improvement Grant

Motion by Liz Renner, second by Kristin Christensen to authorize the Commissioner to grant funds for the Learning Platform Improvement Grant Project.

Deborah Neary	Yes

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Elizabeth Tegtmeier	Yes
Kirk Penner	No
Kristin Christensen	Yes
Lisa Schonhoff	No
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	No

The motion passed.

7.2. **Budget and Finance Committee** – Kristin Christensen, Chair, reported on the meeting of the Committee.

7.2.A. Monthly Board Travel Expense Report

There was no further discussion on the item.

7.2.B. Action Item: Contract for the High-Quality IEP Development and Implementation Pilot Project

Motion by Kristin Christensen, second by Maggie Douglas to authorize the Commissioner to contract for the High-Quality IEP Development and Implementation Pilot Project.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

7.2.C. Action Item: Contract for a Veterans Education Management System Application and Database

Motion by Kristin Christensen, second by Liz Renner to authorize the Commissioner to contract for a Veterans Education Management System Application and Database.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

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7.2.D. Action Item: Contract for 21st Century Community Learning Centers (CCLC) Statewide Evaluation

Motion by Kristin Christensen, second by Maggie Douglas to authorize the Commissioner to contract for 21st Century CCLC Statewide Evaluation.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

President Tegtmeier called for a recess at 10:51 a.m. The meeting resumed at 11:00 a.m.

Kirk Penner returned at 11:02 a.m.

7.3. **Planning and Evaluation Committee Report** – Lisa Schonhoff, Chair, reported on the meeting of the Committee.

7.3.A. Action Item: Contract for 2026-2027 College Admission Test

Motion by Sherry Jones, second by Kristin Christensen to authorize the Commissioner to contract for the 2026-2027 Standard College Admission Test.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

7.3.B. Action Item: Adopt the Assessment and Reporting Plan and Assessment Technical Report for 2025-2026

Motion by Liz Renner, second by Kristin Christensen to adopt the Assessment and Reporting Plan and Assessment Technical Report for 2025-2026.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

DRAFT

7.3.C. Discussion Item: Community Achievement Plan (CAP) of the Learning Community of Douglas and Sarpy Counties.

NDE Representative, Shirley Vargas, introduced Gerald Kuhn, Monica Wells and Jason Taylor from the Learning Community of Douglas and Sarpy Counties and Dr. Terry Haack from the Metropolitan Omaha Educational Consortium (MOEC) to introduce the Learning Community of Douglas and Sarpy Counties and the Community Achievement Plan (CAP).

7.4. **Rules and Regulations Committee** – Maggie Douglas, Chair reported on the meeting of the Committee.

7.4.A. Report on Rules

The report on rules is linked through Sparq in Board Agenda item 7.4.A.

7.4.B. Action Item: Proposed Revision of Rule 11 (92 NAC 11) Regulations For The Approval Of Prekindergarten Programs Established By School Boards Or Educational Service Units And For Issuance Of Early Childhood Education Grants

Motion by Maggie Douglas, second by Kristin Christensen to approve proposed revision of Rule 11 (92 NAC 11) Regulations For The Approval Of Prekindergarten Programs Established By School Boards Or Educational Service Units And For Issuance Of Early Childhood Education Grants.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

7.4.C. Action Item: Proposed Revision of Rule 20 (92 NAC 20) Regulations For The Approval Of Educator Preparation Programs

Motion by Maggie Douglas, second by Lisa Schonhoff to approve proposed Revision Of Rule 20 (92 NAC 20) Regulations For The Approval Of Educator Preparation Programs.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

DRAFT

7.4.D. Action Item: Proposed Revision Of Rule 47 (92 NAC 47) Regulations For Career Academy Programs Established By School Districts

Motion by Maggie Douglas, second by Lisa Schonhoff to approve proposed Revision Of Rule 47 (92 NAC 47) Regulations For Career Academy Programs Established By School Districts.

Deborah Neary	Yes
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

7.4.E. Action Item: Proposed Revision Of Rule 89 (92 NAC 89) Regulations And Procedures To Incentivize Distance Education

Motion by Maggie Douglas, second by Kristin Christensen to approve proposed Revision Of Rule 89 (92 NAC 89) Regulations And Procedures To Incentivize Distance Education.

Deborah Neary	Absent
Elizabeth Tegtmeier	Yes
Kirk Penner	Yes
Kristin Christensen	Yes
Lisa Schonhoff	Yes
Liz Renner	Yes
Maggie Douglas	Yes
Sherry Jones	Yes

The motion passed.

8. ADDITIONAL BUSINESS

(NONE)

9. INFORMATION ITEMS AND REPORTS

Information items and reports are linked through Sparq under Board Agenda item 9.

10. GOOD OF THE ORDER

Board Member Jones was grateful for the opportunity to attend the ExcelinED conference for the second year and the valuable sessions.

NDE Representative, Allyson DenBeste, was asked to cite where the public can leave comments for Social Studies standards.

11. ADJOURNMENT

President Tegtmeier adjourned the meeting at 11:47 a.m.

The next meetings of the State Board of Education are scheduled for January 8-9, 2026, in Lincoln, Nebraska.

DRAFT

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STATE BOARD OF EDUCATION
EXECUTIVE COMMITTEE REPORT

Date: January 9, 2026

The Executive Committee reports on its January 8, 2026, meeting. Members present were chair Elizabeth Tegtmeier, vice chair Deb Neary, Sherry Jones, and Liz Renner.

The committee reviewed four information items. First, the committee received an update on TEEOSA business rules and processes. Next, the committee received an update from NDE staff on implementation of the strategic plan. The committee and Board will continue to receive regular updates. Then, NDE staff provided a review of prior year processes for Board engagement during the legislative session. The committee will meet weekly throughout the duration of the session and will provide direction to the Commissioner. Finally, the committee reviewed a proposed schedule for the Board's 2026 meeting dates, which will be set soon and shared with the Board and public.

This concludes the Executive Committee report.

Elizabeth Tegtmeier, Chair

*Submit a printed copy to the Committee Chair and email to the Recording Secretary.

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STATE BOARD OF EDUCATION
BUDGET AND FINANCE COMMITTEE REPORT

Date: January 8, 2026

The Budget and Finance Committee reports that at its Thursday, January 8th meeting, members present were Kristin Christensen, Maggie Douglas, Kirk Penner and Lisa Schonhoff. The Committee reviewed three action items. The first item reviewed was to approve a potential contract with the OCIO's office for Federally required IDEA and Early Childhood data reporting systems. The Committee recommends approval of this item. The second action item reviewed was to approve the 2025-26 Trust Fund Budget for The Nebraska Center for the Education of Children who are Blind or Visually Impaired (NCECBVI). The Committee recommends approval of this item. Next, the committee reviewed a potential contract for The Nebraska Inclusive Systems Capacity Project to codify ongoing learning and strengthen the internal systems needed to support districts effectively. The Committee recommends approval of this item.

The Committee then reviewed one discussion item for board member travel expenses noting no concerns.

Last, the Committee reviewed four information items including an update on a potential Contract Renewal to Build-Out a Data Collection Process to Meet Federal Post-School Outcome Data Reporting Requirements, a potential subcontract for Preschool Development Grant Funds to Fulfill Grant Requirements, an update on the Comprehensive Literacy State Development Grant expenditures, two new grants related to School Mental Health and an update on the TEEOSA calculation process.

This concludes the Budget and Finance Committee report.

Kristin Christensen, Chair

*Submit a printed copy to the Committee Chair and email to the Recording Secretary.
Updated 02.02.2023

NEBRASKA STATE BOARD OF EDUCATION

TRAVEL REPORT

January 2026

2025-2026 Board Travel

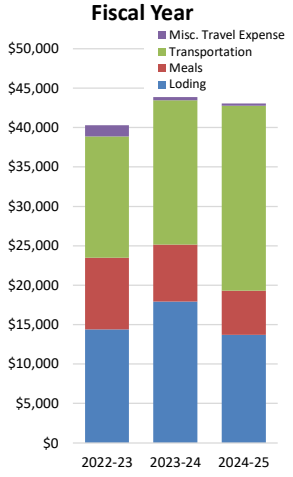
At-A-Glance

Budgeted	Monthly Spending	Annual Spending	Expenditures
$20,141	$3,000 Average	$37,500 Projected	Lodging Meals Mileage

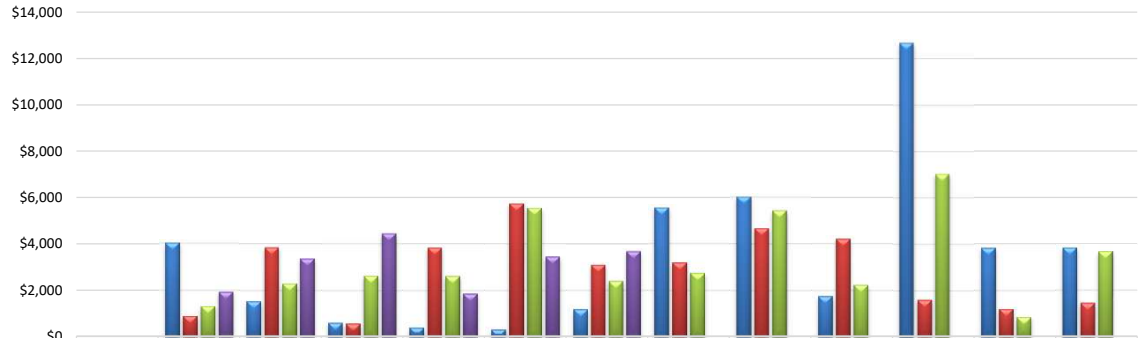
Board Member Activity

District	Board Member	Current Year July 2025-June 2026 December	Current Year July 2025-June 2026 Year-To-Date	Prior Year July 2024-June 2025 December	Prior Year July 2024-June 2025 Year-To-Date	Variance December	Variance Year-To-Date
1	Patsy Koch Johns *Incumbent*	$0	$0	$0	$376	$0	-$376
1	Kristin Christensen *Appointed Dec. 2024*	$0	$1,058	$0	$0	$0	$1,058
2	Lisa Fricke *Incumbent*	$0	$0	-$233	$2,249	$233	-$2,249
2	Maggie Douglas *Appointed Dec. 2024*	$0	$1,133	$0	$0	$0	$1,133
3	Patti Gubbels *Incumbent*	$0	$0	$253	$2,588	-$253	-$2,588
3	Lisa Schonohoff *Appointed Dec. 2024*	$0	$3,301	$0	$0	$0	$3,301
4	Jacquelyn Morrison *Incumbent*	$0	$0	$0	$956	$0	-$956
4	Liz Renner *Appointed Dec. 2024*	$110	$1,042	$0	$0	$110	$1,042
5	Kirk Penner	$0	$44	$0	$548	$0	-$504
6	Sherry Jones	$462	$2,852	$0	$2,456	$462	$395
7	Elizabeth Tegtmeier - President	$3,097	$9,128	$2,379	$6,843	$718	$2,285
8	Deborah Neary - Vice President	$0	$210	$0	$455	$0	-$245
		$3,669	**$18,768**	**$2,399**	**$16,471**	**$1,270**	**$2,296**
	Annual Budget		$20,141		$19,754		
	Under or -Over Budget		**$1,373**		**$3,283**		

Annual Expenditures by Fiscal Year



Annual Expenditures by Month



	July	August	September	October	November	December	January	February	March	April	May	June
2022-23	$4,032	$1,537	$618	$413	$332	$1,193	$5,545	$6,028	$1,765	$12,686	$3,832	$3,816
2023-24	$910	$3,859	$583	$3,853	$5,734	$3,097	$3,197	$4,684	$4,217	$1,607	$1,217	$1,465
2024-25	$1,325	$2,301	$2,633	$2,616	$5,549	$2,399	$2,741	$5,445	$2,243	$7,037	$867	$3,654
2025-26	$1,940	$3,372	$4,461	$1,864	$3,462	$3,669	$0	$0	$0	$0	$0	$0

In-State Travel Authorization Reports - January				
Name	**Event Name**	**Date**	**Location**	**Board Bylaw B16 Code A-F**
Kristin Christensen	(NONE)			
Lisa Schonhoff	(NONE)			
Sherry Jones	NASB Legislative Issues Conference	January 25-26, 2026	Lincoln, NE	E
Elizabeth Tegtmeier	NASB Legislative Issues Conference	January 25-26, 2026	Lincoln, NE	E

In-State Travel Authorization Reports - January				
Name	**Event Name**	**Date**	**Location**	**Board Bylaw B16 Code A-F**
Maggie Douglas	(NONE)			
Liz Renner	(NONE)			
Kirk Penner	(NONE)			
Deborah Neary	(NONE)			

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PROPOSED AGENDA ITEM RATIONALE

DATE: **September 25, 2025**

TO: Dr. Brian L. Maher
Commissioner of Education

FROM: Jill Aurand, Administrator, Data Management and Application Development
Amy Rhone, Administrator, Office of Special Education
Melody Hobson, Administrator, Office of Early Childhood

PROPOSED AGENDA ITEM: Action Item: Contract for Federal IDEA and Early Childhood Data Application Development.

AGENDA ITEM TYPE (contract/grant/rule/program/other): Contract

RATIONALE/BACKGROUND INFORMATION:

In accordance with BOP 1.14, The Office of Data Management and Application Development is providing the following information: The Nebraska Department of Education (NDE) seeks to enter into a contract with the Office of the Chief Information Officer (OCIO) to supply application developers who will support Special Education initiatives and Early Childhood professional development systems. The contract term will run from December 15, 2025, through December 14, 2026.

Office of Special Education Contract Portion: This contract will provide dedicated application development services for the Office of Special Education, with primary focus areas including the Special Education Improving Learning for Children with Disabilities (ILCD) system, The Special Education Contract Service Provider (CSP) system, and the Special Education Financial Reporting System (SPEDFRS).

ESTIMATED COST: $230,000.00

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: Federal, IDEA Part B – 611, 619, and IDEA Part C
- New or Renewal: New
- If renewal, date of first approval: N/A

Office of Early Childhood Contract Portion: This contract will provide dedicated application development services for the Office of Early Childhood to design, develop, test, and deploy revised screens for the Nebraska Early Childhood Professional Development System (NECPRS). Nebraska Revised State Statutes § 71-1962 requires the Nebraska Department of Education to create and operate the Nebraska Early Childhood Professional Record System (NECPRS).

ESTIMATED COST: $310,000

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: Federal Child Care and Development Funds
- New or Renewal: New
- If renewal, date of first approval: N/A

These projects are critical to ensuring that Special Education and Early Childhood programs have the technical capacity needed to maintain, enhance, and support applications that serve districts, providers, and families across Nebraska.

PROPOSED BOARD MEETING (MONTH/YEAR): October 2025

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PROPOSED AGENDA ITEM RATIONALE

DATE: December 16, 2025

TO: Dr. Brian L. Maher
Commissioner of Education

FROM: Amy Rhone, Administrator, Office of Special Education

PROPOSED AGENDA ITEM: Action Item: Authorize the Commissioner to contract for The Nebraska Inclusive Systems Capacity Project.

AGENDA ITEM TYPE (contract/grant/rule/program/other): Contract

RATIONALE/BACKGROUND INFORMATION: In 2022, the Office of Special Education (OSE) began collaborating with the Office of Coordinated District and School Improvement and initiating contracted support with TNTP to strengthen services for Nebraska's Priority Schools. Pursuant to §79-760.07 R.R.S., the State Board of Education is required to designate no fewer than three Priority Schools each year. To meet this statutory obligation and ensure districts receive meaningful support, the Nebraska Department of Education (NDE) has engaged external experts to provide intensive, needs-based assistance. These supports include diagnostic reviews, on-site coaching for administrative teams, development and monitoring of Progress Plans, and capacity-building for NDE staff aligned to statewide school improvement priorities.

In 2024, the OSE continued its partnership with TNTP to deepen support in identifying and advancing key levers that increase instructional access for students with disabilities. This work directly responded to district needs and longstanding concerns regarding variability in instructional quality, misalignment between special education programming and general education instructional models, and ongoing challenges in staffing and developing educators to provide high-quality instruction to all students.

These challenges have been further compounded by shifts in Nebraska's special education leadership structures—where principals now serve as the primary accountable administrators in partnership with special education coordinators or directors—and by the continued trend of a high percentage of students identified for special education services. Together, these conditions underscore the need for consistent statewide guidance, targeted leadership development, and coherent systems that ensure students with disabilities have equitable access to rigorous instruction.

In July 2025, the OSE renewed its contract with TNTP to support the development of an NDE system designed to help districts deliver timely, evidence-based, and coordinated instruction and supports so that

students with disabilities can thrive academically, socially, and emotionally. Improving outcomes for these student populations requires a focus on:

- Coherent Systems: Strengthened alignment across state, district, and school systems to ensure consistent student experiences and targeted supports.
- Strong Practices: The scaling of evidence-based instructional strategies that elevate academic outcomes for all students.
- Enhanced Leadership Capacity: Targeted professional learning and development that enables leaders to address structural barriers and drive sustainable improvement.

This contract renewal fell below the threshold requiring Board approval.

The Office of Special Education now seeks to expand the scope of work within the existing TNTP contract to codify ongoing learning and strengthen the internal systems needed to support districts effectively. The proposed additional work includes:

- Team Structures and Alignment: Ensuring OSE staff can clearly articulate how internal roles, processes, and federal monitoring requirements align to departmental goals and drive improved student outcomes.
- Team Development and Belonging: Building collaboration, clarity of roles, and a shared sense of purpose across the OSE through structured professional development and intentional team-building.
- Transition Planning Toolkit: Developing a comprehensive statewide transition planning toolkit and a detailed implementation plan for rollout in the 2026–27 school year.
- Health Assessment Implementation: Launching and communicating clear guidance for districts regarding the implementation and use of the NDE Special Education Health Assessment to support consistent, high-quality evaluation practices.
- Stakeholder Engagement and Partnerships: Engaging stakeholders to refine the transition toolkit and establishing an ESU or district pilot partnership to support high-quality implementation and program planning.

Contract dates will remain July 1, 2025, through June 30, 2026. The proposed amendment increases the contract amount by $49,225.00, bringing the total contract cost to $99,005.00.

This information item is provided to ensure transparency regarding the evolution of this work and to support the Board's understanding of how these efforts will strengthen statewide coherence, build NDE capacity, and improve outcomes for students with disabilities across Nebraska.

ESTIMATED COST: $99,005.00

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: Federal, IDEA Part B – 611 and 619
- New or Renewal: New
- If renewal, date of first approval: N/A

FOR NEW CONTRACTS OR OTHER CONTRACTS REQUIRING PROCUREMENT:

- Indicate the method of procurement: Competitive Negotiation (Request for Proposal)

- Rationale for method of procurement: Ensure multiple potential contractors with various experiences and expertise could demonstrate their approach to supporting underperforming schools through a proposal – that addresses the various needs of the identified schools or potential new schools.

- Rationale for contractor selection: TNTP was selected in June 2022 through a competitive negotiation process – Request for Proposals RFP.NDERFP.220320. This vendor has been working with the current Priority Schools and with through board approval of the original contract date and additional year approval in May of 2023. This vendor was the top scoring from a panel of five NDE employees. The vendor demonstrated the skills, abilities, and proved track record of support underperforming schools.

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PROPOSED AGENDA ITEM RATIONALE

DATE: December 18, 2025

TO: Brian L. Maher.
Commissioner of Education

FROM: Amy Rhone – Office of Special Education

PROPOSED AGENDA ITEM: Action Item: Authorize the Commissioner to approve the 2025-26 Trust Fund Budget for The Nebraska Center for the Education of Children who are Blind or Visually Impaired (NCECBVI).

AGENDA ITEM TYPE (contract/grant/rule/program/other): Other

RATIONALE/BACKGROUND INFORMATION: Nebraska Revised state Statute 79-318 (15) establishes the State Board's responsibility to administer any device, donation, or bequest to NCECBVI. The Budget and Finance Committee has been designated as the Board committee to review annually the staff recommendations for expenditure of the Department's trust funds. Approval of the Trust Fund Budget will allow the Department to access the trust funds during the 2024-2025 for support of the NCECBVI as outline the Trust Fund Budget Proposal (see supplemental document).

The Trust Fund Budget Proposal breaks down each of the individual trust fund and the amount that is proposed to be utilized from each of them.

PROPOSED BOARD MEETING (MONTH/YEAR): December 2025

ESTIMATED COST: $181,500.00

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: Individual Trust Funds as indicated in the supplemental document.
- New or Renewal: N/A
- If renewal, date of first approval: N/A

FOR NEW CONTRACTS OR OTHER CONTRACTS REQUIRING PROCUREMENT:

- Indicate the method of procurement:
- Rationale for method of procurement:
- Rationale for contractor selection:

FOR GRANT SUBAWARDS:

- Describe the grantee selection process:

NEBRASKA STATE BOARD OF EDUCATION

October 17, 2025

TRUST FUND
BUDGET PROPOSAL

2026

Nebraska Center for the
Education of Children who are
Blind or Visually Impaired

Tanya Armstrong, Ph.D.

UNRESTRICTED TRUST FUND 2026 BUDGET

Estates: Lucile E. Huber, James E. Labertew, Herman Wolf, Ralph E. Fulton, John S. Knepper, Eva M. Fischer, Lorraine L. Hight, Pansy M. Behrens, Louis A. Lembach, Merle M. Hargen, Irvin Schapaugh, Irma I. Scheitel, Mollie Schaefer, Lena Johnson, and Anna Wilcox

Purpose: No restrictions other than to benefit the Nebraska Center for the Education of Children who are Blind or Visually Impaired

Current Amount: **$396,695.50**

Previous Projects Funded: Primarily facility improvements, repairs, and maintenance

Proposed Projects:

Facilities Maintenance, Repair, and Expenses ▪ Concrete Repair and/or Replacement ▪ Retaining Wall Repair ▪ Window Replacement ▪ Epoxy Flooring	$ 50,000
Emergency Expenses	$ 25,000
TOTAL PROPOSED FUNDING:	**$ 75,000**

WILLIAMS TRUST FUND 2026 BUDGET

Estate: F.D. Williams

Purpose: To contribute to the expense of poor and needy students and to worthy graduates who desire to continue their education upon graduation.

Current Amount: **$1,107,940.63**

Previous Projects Funded: Educational and diagnostic equipment and supplies for students who are blind or visually impaired.

Proposed Projects:

Educational/Recreation Supplies ▪ Includes Braille Library Books, Orientation & Mobility Supplies	$ 5,000
Student Need Items--Learning Devices and Sensory Materials	$ 10,000
Low Vision Clinics	$ 4,000
Medical Supplies/Student Needs	$ 7,000
Assistive Technology	$ 53,000
Repair/Maintenance of Student Technology and Devices	$ 2,000
National Events for Students (i.e. Braille Challenge)	$ 5,000
TOTAL PROPOSED FUNDING:	**$86,000**

RESTRICTED MARKUSSEN TRUST FUND 2026 BUDGET

Estate: Karen Markussen

Purpose: To be used to assist Nebraska teachers who are pursuing their degree to teach children with visual impairments.

Current Amount: **$9,198.85**

Projects Funded: Annual $500 scholarship to be given to a Nebraska teacher.

Proposed Projects:

Scholarship	$	500
TOTAL PROPOSED FUNDING	**$**	**500**

UNRESTRICTED JAY TRUST FUND 2026 BUDGET

Estate: Lyle Dean Jay Trust

Purpose: No restrictions other than to benefit the Nebraska Center for the Education of Children who are Blind or Visually Impaired.

Current Amount: **$38,094.64**

Proposed Projects:

Furniture	$ 4,000
Facility Expenses ▪ Blinds/Window Treatments ▪ Mapes Panels	$ 12,000
Technology Expenses	$ 4,000
TOTAL PROPOSED FUNDING:	**$ 20,000**

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STATE BOARD OF EDUCATION
PLANNING AND EVALUATION COMMITTEE REPORT

Date: January 8, 2026

The Planning and Evaluation Committee reports on their committee meeting on January 8, 2026. The members present were Lisa Schonhoff, Sherry Jones, Deborah Neary, and Kristin Christensen.

The committee reviewed one action item related to the Community Achievement Plan of the Learning Community of Douglas and Sarpy Counties. The committee recommends no action on this item.

The committee reviewed informational items related to the contract for general and alternate statewide assessment services and the Priority School Designation Process update. NDE staff will bring these items to a future meeting for discussion and subsequent approval, where appropriate.

This concludes the Planning and Evaluation report.

Lisa Schonhoff, Chair

*Submit a printed copy to the Committee Chair and email to the Recording Secretary.
Updated 02.02.2023

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PROPOSED AGENDA ITEM RATIONALE

DATE: December 15, 2025

TO: Dr. Brian L. Maher
Commissioner of Education

FROM: Shirley Vargas, Ed.L.D.
School Transformation Officer

PROPOSED AGENDA ITEM: Community Achievement Plan of the Learning Community of Douglas and Sarpy Counties

AGENDA ITEM TYPE (contract/grant/rule/program/other): Plan

RATIONALE/BACKGROUND INFORMATION:
In accordance with Nebraska Revised Statute §79-2122, which took effect on July 21, 2016, the districts in the Learning Community of Douglas and Sarpy Counties collaboratively developed a Community Achievement Plan (CAP). The CAP serves as the plan that brings multiple stakeholders, initiatives, and plans together to collectively improve the outcomes of the students served in Douglas and Sarpy counties.

The CAP is comprised of four major strands of work that are in various stages of development, implementation, and data gathering and reporting. The four areas are the Superintendents' Early Childhood Plan, North and South Omaha Learning Centers, the MOEC Collective Impact Plan, and the Superintendents' Attendance Plan.

N.R.S. §79-2122 requires "an approved plan (that) shall remain in effect for three years except as revised with the approval of the state board. The learning community shall submit a report on the success of the plan, evaluation results, and proposed revisions by December 1 immediately following the completion of the first two years of implementation and every three years thereafter." The CAP was last approved by the State Board on April 7, 2023.

The CAP 2026-2029 has been approved by the superintendents of the 11 participating districts on November 13, 2025, and the Learning Community Coordinating Council on November 19, 2025.

Attachments: CAP 2026-2029

Timeline:

- August 2025: Information Item

- September 2025: Information Item
- October 2025: Information Item
- December 2025: Discussion Item
- January 2026: Action Item

PROPOSED BOARD MEETING (MONTH/YEAR): January 2026

ESTIMATED COST: N/A

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source:
- New or Renewal:
- If renewal, date of first approval:

FOR NEW CONTRACTS OR OTHER CONTRACTS REQUIRING PROCUREMENT:

- Indicate the method of procurement:
- Rationale for method of procurement:
- Rationale for contractor selection:

FOR GRANT SUBAWARDS:

- Describe the grantee selection process: NA

**Updated 07.06.2023*

Community Achievement Plan (CAP) of the Learning Community of Douglas and Sarpy Counties

(2026-2029)

Approved by the Superintendents of the Learning Community on: 11/13/25	Approved by the Learning Community Coordinating Council on: 11/19/25	Approved by the Nebraska State Board of Education on: _____

Vision

That all children within the Learning Community achieve academic success without regard to social or economic circumstance.

Mission

Together with school districts and community organizations as partners, we demonstrate, share, and implement more effective practices to measurably improve educational outcomes for children and families in poverty.

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Community Achievement Plan (CAP) of the Learning Community of Douglas and Sarpy Counties (2026-2029)

Approved by the Nebraska State Board of Education, April 14, 2023

Revisions and Progress Reports Submitted, October 3, 2025

CAP Background

Required by Nebraska Revised Statute §79-2122, the Community Achievement Plan (CAP), was originally approved by the State Board of Education on April 7, 2017, and revised and approved on April 14, 2023. The CAP impacts the Learning Community of Douglas and Sarpy counties, the 11 school districts contained therein, and Educational Service Unit's 3 and 19. Over 125,000 PreK-12 students attend the schools of the Learning Community and are impacted by the Community Achievement Plan.

The Community Achievement Plan was developed to provide synergy and collaboration between already existing programs and newly conceived initiatives. These included:

- the Superintendents' Early Childhood Plan—a partnership between the 11 school districts, the Buffett Early Childhood Institute at the University of Nebraska, and the Learning Community of Douglas and Sarpy Counties. The Superintendents' Early Childhood Plan was specifically developed in response to legislation (LB 585) passed by the Nebraska Legislature in 2013 that directed the Learning Community Coordinating Council to establish an early childhood program designed by the metro Omaha superintendents for young children living in high concentrations of poverty. The plan is financed by a half-cent levy on property values, the funds shared roughly equally between the Institute and the participating school districts;
- the Superintendents' Attendance Plan – a partnership between the 11 school districts, Douglas and Sarpy County law enforcement agencies, county juvenile court systems, county attorneys' offices, and Nebraska state offices to focus on increasing student attendance;
- the Learning Community of Douglas and Sarpy Counties' North and South Omaha Learning Centers; and
- a Collective Impact Initiative developed by the Metropolitan Omaha Education Consortium (MOEC).

CAP General Operating Principles

The completion of the Community Achievement Plan necessitated that those responsible for its completion do so based upon a set of shared operating principles. The principles included a focus on

- students of poverty and limited English proficiency, within the framework of all students,
- student achievement and access to programs and services, and

- common goals for student achievement (academic readiness, proficiency in reading and math, graduation, successful transition to the next level, attendance, and completion of grade and program, participation in work experiences, etc.) across the continuum of their PK- 16 experiences.

To actualize these principles, the Learning Community will:

- continue to foster collaboration between and among the 11 school districts, Educational Service Units 3 and 19 and the Learning Community of Douglas and Sarpy counties, and community partners
- continue to address achievement barriers,
- be research and/or evidence-based,
- utilize best practices in addressing achievement issues,
- acknowledge the diversity of the member districts and their communities,
- provide customized plans matched to the schools/districts and community needs,
- capitalize on recently developed collaborative action while developing new initiatives to address critical needs, and
- promote continuous improvement while recognizing that changing conditions will necessitate changes in strategies over time.

Community Achievement Plan

These sections are intended to enhance and expand upon current initiatives as the plan evolves and additional community partners become involved. The CAP consists of four sections containing goals, strategies, and actions associated with each:

I. Section 1: Increased Access to Early Childhood Programming

1.1 Customized Assistance for Districts

All districts in the Learning Community will have access to customized assistance to support their early childhood goals. The Institute will partner with district leaders to co-create and monitor action plans, provide consultation and technical assistance, and build district capacity to design, implement, and sustain high-quality early childhood systems and programs.

1.2 School as Hub Programming for Schools

Districts will deepen implementation of the School as Hub model in selected schools with high concentrations of poverty. This approach integrates leadership effectiveness, instructional excellence, and family–community partnership engagement to ensure children and families from birth through Grade 3 experience continuity of high-quality learning opportunities and supports.

1.3 Specialized Professional Learning for Educators

Districts will collaborate with the Institute to provide specialized professional learning for early childhood educators, leaders, and family-facing staff across settings. Professional learning will be aligned to district action plans and the School as Hub

framework, with a focus on research-based practices that improve instructional quality, leadership capacity, and family engagement.

II. Section 2. Increased Parent Engagement and System Capacity Building Through the North and South Omaha Learning Centers

2.1 Family Learning at the Learning Community Center of South Omaha

The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify effective strategies for strengthening the capacity of parents and family members who have limited English proficiency and who are living in poverty to support their children's learning.

2.2 Parent University at the Learning Community Center of North Omaha

The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify effective strategies for strengthening the capacity of parents of high-poverty backgrounds to support their children's learning.

2.3 Intensive Early Childhood Classrooms at the Learning Center of North Omaha

The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify effective strategies for intensive, high-quality preschool experiences that measurably improve the educational outcomes for children from high-poverty backgrounds.

2.4 Partnership with IEC and Child Care Centers at the Learning Community Centers of North and South Omaha

The districts in the Learning Community of Douglas and Sarpy Counties will collaborate with Omaha Public Schools' Intensive Early Childhood Partnership (IEC) to strengthen partnerships with childcare centers located in proximity to the North and South Learning Community Centers. The focus is to extend high-quality early learning practices and coaching supports into community childcare centers serving children from high-poverty backgrounds.

2.5 Workforce Development Initiative at the Learning Community Centers of North and South Omaha

The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify and expand workforce development strategies that support parents and family members, increasing family stability and economic opportunity to improve children's learning outcomes.

III. Section 3: Metropolitan Omaha Education Consortium (MOEC) Collective Impact Achievement Plan

3.1 Students and families are engaged in high-quality early childhood experiences, so they are successful in the primary grades.

3.2 Students complete P-12 education and are prepared to successfully engage in a career pathway.

3.3 Students complete postsecondary experiences prepared for career success.

3.4 Business and community partners are engaged in collaborations with educators to create career and employment opportunities.

IV. Section 4: Superintendents' Attendance Plan

4.1 To improve student attendance and learning by offering assistance to youth and families, accomplished by early assessment and prompt delivery of coordinated interventions that promote school attendance and decrease at-risk behaviors.

Changes to the Community Achievement Plan

1. In Section 1, updates include revisions to Goal 1: Customized Assistance, highlighting action planning and capacity building for all 11 districts, Goal 2: School as Hub Programming, emphasizing birth through grade 3 in schools serving high concentrations of poverty, and Goal 3: Specialized Professional Learning, expanding tailored learning, coaching, and communities of practices for educators, leaders, and family-facing staff.
2. In Section 2, updates include expanding satellite locations to strengthen partnership with schools and offer Parent University in North Omaha, increase the Workforce Development Pathway to serve more families, and deepen partnerships with childcare centers in North and South Omaha.
3. In Section 3, updates include continued focus areas on math and literacy across participating districts, along with postsecondary partners, outline current metrics measured, and focus on student postsecondary and career success.
4. In Section 4, the Superintendents' Attendance Plan includes a goal and action plan, aligned to statutory requirements, highlighting best practices, for each participating district to address student attendance.

Section 1: Increased Access to Early Childhood Programming

CAP Goal

Goals of the Superintendents' Early Childhood Plan focus on reducing or eliminating opportunity gaps for every child by helping Learning Community school districts create and sustain high-quality early childhood practices and policies. This includes:

1.1 GOAL 1: **Customized Assistance for Districts:** Support all 11 districts in developing and implementing comprehensive early childhood action plans that build district capacity, strengthen leadership, align policies and practices, and reduce opportunity gaps for children from birth through Grade 3.

1.2 GOAL 2: **School as Hub Programming for Schools:** Strengthen the "School as Hub" approach in selected elementary schools with high concentrations of poverty, ensuring children and families benefit from high-quality instruction, strong family-school partnerships, and seamless access to supports from birth through Grade 3.

1.3 GOAL 3: **Specialized Professional Learning for Educators:** Advance the expertise of early childhood educators, leaders, and family-facing professionals through tailored professional learning, coaching, and communities of practice that strengthen instructional excellence, leadership effectiveness, and family and community partnership engagement across the Learning Community.

Strategies/Activities

GOAL 1: Customized Assistance for Districts strengthens district systems for children from birth through Grade 3 by focusing on leadership effectiveness, instructional excellence, and family and community partnership engagement. Districts develop action plans in collaboration with the Buffett Institute that guide implementation of early childhood priorities.

Institute staff collaborate with district leaders to:

- Co-develop and monitor action plans.
- Provide consultation and technical assistance aligned to district needs.
- Design and facilitate professional learning connected to action plan goals.
- Support collaboration and problem-solving to address barriers and sustain implementation.

Evaluation Plan

Evaluation activities for the Superintendents' Early Childhood Plan are designed to assess outcomes for children, families, and systems, while also informing continuous improvement. Both qualitative (e.g., interviews, focus groups) and quantitative (e.g., surveys, assessments, administrative data) methods are used. Data use agreements are developed with districts, as needed, to support evaluation activities.

Child-Level Outcomes

The evaluation examines how participation in School as Hub programming influences children's experiences and growth. Key questions include:

- How does engagement in the Superintendents' Plan influence students' academic growth within School as Hub sites?
  Measure: Academic Achievement Reflections and district

District leaders collaborate with Institute staff by:

- Establishing and following action plans.
- Maintaining regular communication.
- Engaging in planning and implementation.
- Taking steps to achieve identified goals.

GOAL 2: <u>School as Hub Programming for Schools</u> provides comprehensive birth through Grade 3 supports in selected elementary schools serving high concentrations of poverty. The approach integrates home visiting for children birth to age 3, high-quality preschool, and aligned PreK–3 curriculum, instruction, and assessment, along with strong family–school partnerships.

Institute staff collaborate with district and school leaders to:

- Provide consultation and coaching to principals, teachers, family facilitators, and home visitors.
- Plan and co-facilitate monthly School as Hub team meetings.
- Facilitate professional learning at school sites to strengthen instructional and family engagement practices.
- Support implementation of aligned instruction, leadership, and family engagement strategies.

School and district leaders, staff, and facilitators engage by:

- Leading and sustaining birth through Grade 3 programming.
- Promoting family and community engagement as a central part of the school's work.
- Facilitating home visits and socialization events for families with infants and toddlers.
- Creating and supporting family engagement opportunities for all families in the school community.
- Participating in consultation, coaching, professional learning, and team-based planning.

GOAL 3: <u>Specialized Professional Learning for Educators</u> builds the knowledge and skills of educators, leaders, and family-facing staff

assessments

- How does engagement in the Superintendents' Plan influence children's development and social-emotional skills?
  Measure: ASQ and ASQ-SE

Family-Level Outcomes

The evaluation assesses how families engage with and benefit from School as Hub supports. Key questions include:

- What is the influence of family engagement programming on perceptions of support?
  Measures: Family Interviews and Family Engagement Staff Focus Groups
- What is the level of collaboration among families, schools within School as Hub sites, and communities?
  Measures: Family Engagement Survey

Systems-Level Outcomes

Evaluation activities track how the plan strengthens leadership, instructional excellence, and family–community engagement across districts. Key questions include:

- What are the barriers and facilitators to collaboration between district stakeholders and Institute staff members?
  Measure: Collaboration Survey
- How much progress was made toward district-level action plan goals?
  Measures: Action Plan Focus Groups
- What was the depth of learning from participants engaged in professional learning opportunities?
  Measures: *Professional Learning Survey*
- How did engagement in the Lens series influence early childhood educators' learnings and perceptions of the six essential child experiences?
  Measures: Lens Series Program Surveys
- How did engagement in the Superintendents' Plan

across the Learning Community. Professional learning opportunities strengthen instructional excellence, leadership effectiveness, and family and community partnership engagement from birth through Grade 3. **Institute staff collaborate with district and school leaders to:** • Provide access to a catalog of professional learning offerings for schools, districts, and community childcare programs to select programming aligned with their needs and priorities. • Design and deliver professional learning aligned to district action plans and School as Hub priorities. • Facilitate workshops, communities of practice, and coaching to support implementation of best practices. • Provide tailored supports that connect research and innovative strategies to classroom, leadership, and family engagement practices. **District, school leaders, and staff engage by:** • Participating in professional learning sessions, coaching, and communities of practice. • Applying new knowledge and strategies to strengthen instructional practice, leadership, and family engagement. • Sharing insights and lessons learned to inform continuous improvement across schools and districts.	consultation, coaching, and communities of practice influence teacher and principal perceptions of self-efficacy for teaching and leadership? *Measures: Self-Efficacy Surveys* **Summary** Together, these measures provide a comprehensive picture of how the Superintendents' Early Childhood Plan improves child learning and well-being, strengthens family engagement, and builds district and school capacity to sustain high-quality early childhood systems.

Partnerships

The Superintendents' Early Childhood Plan is built on strong partnerships across the Learning Community of Douglas and Sarpy Counties. Representatives from all 11 districts are engaged as advisors and collaborators on a regular basis. Every district has access to **Customized Assistance** and **Specialized Professional Learning** through the Buffett Early Childhood Institute, while six districts implement **School as Hub programming** in designated elementary schools serving high concentrations of poverty.

Representative partnerships include:

Learning Community of Douglas and Sarpy Counties: The Learning Community partners with the Buffett Early Childhood Institute and school districts to provide governance, oversight, and fiscal responsibility for the Superintendents' Early Childhood Plan. As the primary funder, the Learning Community ensures alignment with statutory requirements and community priorities, while supporting accountability and sustainability of the plan.

Buffett Early Childhood Institute: The Buffett Early Childhood Institute serves as the lead implementation partner for the Superintendents' Early Childhood Plan. The Institute collaborates with districts, schools, and community partners to design and implement programming, provide customized assistance, and facilitate professional learning. In partnership with the Learning Community, the Institute ensures that the plan is research-based, responsive to district needs, and continuously improved through evaluation.

Superintendents' Plan Workgroup: Each superintendent appoints an administrator to serve as a workgroup member. Members collaborate with one another and Institute staff to advise on the direction of the Superintendents' Plan. The workgroup meets quarterly.

District Leaders: Select school district leaders, including (but not limited to) early childhood coordinators, special education directors, curriculum directors, and student services administrators, partner with Institute staff to strengthen district systems through customized assistance and support implementation of School as Hub programming at school sites.

School Principals: Principals from the 10 School as Hub sites works regularly with Institute staff to implement School as Hub programming aligned with district priorities and action plans.

School Staff: Home visitors, family facilitators, community facilitators, teachers, and other school staff collaborate with Institute staff to provide children and families access to high-quality learning through classroom instruction, home visitation, family learning events, family engagement, connections to community supports, and engagement with community child care programs.

Evaluation Partner: To ensure accountability, effectiveness, and continuous program improvement, the Munroe-Meyer Institute at the University of Nebraska Medical Center serves as the independent third-party evaluator.

This partnership structure ensures shared governance, aligns district and community goals, and sustains collective responsibility for advancing high-quality early childhood education across the Learning Community.

Section 2: Increased Parent Engagement and System Capacity Building Through the North and South Omaha Learning Centers

<table>
<tr><td colspan="2">2.1 Family Learning at The Learning Community Center of South Omaha</td></tr>
<tr><td colspan="2">CAP Goal
2.1 Family Learning at the Learning Community Center of South Omaha – The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify effective strategies for strengthening the capacity of parents and family members who have limited English proficiency and who are living in poverty to support their children's learning.

2.1.1 By 2029, parents will demonstrate individualized gains in English language acquisition as measured by CASAS assessments, with at least 70% advancing one or more proficiency levels after 40+ instructional hours.
2.1.2 By 2029, at least 65% of parental interactions will be of medium to high quality (building relationships, promoting learning, and supporting confidence) as measured by the KIPS assessment.
2.1.3 By 2029, families receiving navigation services will demonstrate measurable increases in self-sufficiency and reduced stress as evidenced through social assistance navigator data.
2.1.4 By 2029, students of parents engaged for two years or more will demonstrate stronger educational outcomes than district peers, including:
• Higher attendance rates (with 70% or more missing fewer than 10 days).
• Academic performance in the average or above average range on NWEA MAP in reading and math.
• Gains in executive functioning and social-emotional skills, with at least 90% scoring in the average range by spring.

For more information about the program, please see the annual report: www.learningcommunityds.org.</td></tr>
<tr><td>Strategies/Activities
• Expand programming to two satellite locations in partnership with Omaha Public Schools to increase access for families in school communities.
• Diversify course offerings to reach a wider range of participants, including expanded workforce development pathways, digital literacy, and financial literacy.
• Provide ESL and GED instruction supported by bilingual facilitators, with progress monitored through CASAS assessment and GED enrollment/completion data.
• Deliver parenting classes and workshops (Circle of Security, Love and Logic, financial literacy, nutritious cooking) to</td><td>Evaluation Plan
• CASAS Assessment to track English language proficiency gains.
• KIPS assessment to measure parent-child interaction quality.
• Navigator data (referrals, closures, and family outcomes) to measure family resiliency and self-sufficiency.
• Attendance tracking for students to monitor progress toward 70%+ meeting the 10-day absenteeism threshold.
• NWEA MAP results for students to monitor reading and math achievement compared to district averages.
• Executive functioning and social-emotional measures (teacher-reported and observational) to assess student growth from fall to spring.</td></tr>
</table>

strengthen parenting skills and protective factors. • Utilize Educational and Social Assistance Navigators to provide individualized support, connect families to resources, and monitor family progress through structured assessments. • Facilitate interactive parent-child activities and monitor outcomes using KIPS to measure improvements in building relationships, promoting learning, and supporting confidence. • Partner with workforce organizations to award certificates in high-demand fields, track completion rates, and assess parent-reported gains in employment or education. • The team will continue to respond to families and community constituents with emphasis on inclusive practices.	
Partnerships UNO Special Education/Communication Disorders, UNO School of Music, Opera Omaha, PTI Nebraska, Joslyn Art Museum, Nonprofit Association of the Midlands, ASCEND Network at Aspen Institute, Lutheran Family Service, Omaha Public Schools, Nebraska Enterprise Fund, Project Harmon, Heartland Workforce Solutions, Smart Girls Society, SPARK Positivity, The Big Garden, Douglas County Health Department, Food Bank of the Heartland, Latino Center of the Midlands, Omaha Public Library, Omaha Conservatory of Music, Buffett Early Childhood Institute, City Sprouts, Creighton University, Child Saving Institute, Nebraska Extension Office, Omaha Fire Department, Women's Center for Advancement, UNMC Center for Reducing Health Disparities, UNO Service Learning Academy	

2.2 Parent University at The Learning Community Center of North Omaha
CAP Goal 2.2 Parent University at the Learning Community Center of North Omaha – The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify effective strategies for strengthening the capacity of parents of high poverty backgrounds to support their children's learning. 2.2.1 By 2029, students of parents participating in the program for two years or more will demonstrate increased educational outcomes by effectively engaging parents in their child's school. 2.2.2 By 2029, students of parents participating in the program for two years or more will demonstrate improved educational outcomes as evidenced by stronger attendance (65% missing fewer than 10 days) and academic performance in the average

range on NWEA MAP reading and math assessments.

2.2.3 By 2029, parents participating in ESL or GED cohorts will show measurable gains in English and literacy, with at least 70% advancing one or more levels on CASAS after 40+ hours of instruction.

2.2.4 By 2029, parents will demonstrate individualized gains in parent-child interactions, with at least 65% achieving medium-to-high quality interactions (Building Relationships, Promoting Learning, Supporting Confidence) as measured by the Keys to Interactive Parenting Scale.

By 2025, children ages birth–5 whose parents participate in Parent University will demonstrate measurable gains in early development and social-emotional growth, as assessed by the Developmental Assessment of Young Children (DAYC-2) and Devereux Early Childhood Assessment (DECA).

For more information about the program, please see the annual report: www.learningcommunityds.org.

Strategies/Activities

- Provide ESL and GED instruction with bilingual supports, tracking progress through CASAS.
- Deliver parenting education workshops (Circle of Security, Love & Logic, Growing Great Kids, trauma-informed supports) that strengthen protective factors and parenting strategies.
- Utilize Educational Navigators to create individualized family action plans, conduct monthly home visits, and connect families with resources based on student and parent needs.
- Facilitate parent-child interactive activities and monitor progress through KIPS™ assessments.
- Use DAYC-2 and DECA assessments to evaluate children's language, development, and social-emotional skills, and adjust programming to address identified needs.
- Expand Parent University with a satellite location by 2027 to extend access to additional North Omaha families.
- The team will continue to respond to families and community constituents with emphasis on inclusive practices.

Evaluation Plan

- CASAS: Track adult English language acquisition.
- GED enrollment/completion: Monitor parent educational attainment.
- KIPS: Measure parent-child interaction quality.
- DAYC-2 and DECA: Assess child development and social-emotional growth.
- NWEA MAP: Monitor student achievement in reading and math.
- Attendance records: Track chronic absenteeism and improvements over time.

Partnerships

Boys Town, Williams Consulting, Abundant Life Consulting, Bellevue University, Family Housing Advisory Services, Empowerment Network, Eastern Nebraska Action Partnership, Omaha Bridges out of Poverty, Life Coach Academy, Goodwill Industries, Creighton University, PTI Nebraska, Project Harmony

<table>
<tr><td colspan="2">2.3 Intensive Early Childhood Classrooms at The Learning Community Center of North Omaha</td></tr>
<tr><td colspan="2">CAP Goal
2.3 Intensive Early Childhood Classrooms at the Learning Center of North Omaha – The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify effective strategies for intensive, high quality preschool experiences that measurably improve the educational outcomes for children from high poverty backgrounds.
2.3.1 By 2029, students enrolled in IEC classrooms will demonstrate measurable improvements in school readiness skills as evidenced by significant gains in vocabulary, literacy, and numeracy measured through the DAYC-2 and teacher-reported assessments.
2.3.2 By 2029, children will show growth in social-emotional development, with at least 90% scoring within the average range by spring as measured by the DECA.
2.3.3 By 2029, IEC classrooms will maintain high-quality environments, with CLASS domain scores (emotional support, classroom organization, instructional support) meeting or exceeding national quality thresholds.
2.3.4 By 2029, students will demonstrate gains in executive functioning, with at least 90% achieving scores in the average range on school readiness and classroom-based measures.
For more information about the program, please see the annual report: www.learningcommunityds.org.</td></tr>
<tr><td>Strategies/Activities
Partner with OPS to deliver 13 high-quality preschool classrooms in six schools, serving children ages 3–5.
Implement CLASS observations annually to ensure teaching practices provide strong emotional support, classroom organization, and instructional quality.
Use the DAYC-2 to monitor vocabulary, communication, and cognitive growth, adjusting curriculum and teacher supports to address gaps.
Use the DECA to track children’s protective factors (initiative, self-control, attachment) and guide social-emotional learning supports.
Provide inclusive supports for children with IEPs, ensuring differentiated strategies that promote both language and social-emotional growth.
Facilitate professional development and coaching cycles for teachers, grounded in continuous quality improvement and IEC best practices.</td><td>Evaluation Plan
NWEA-MAP® Growth™.
Ninety-five percent of Nebraska school districts will be able to identify at least one high- quality early childhood educational program accessible to all of the district’s resident preschool age population, by 2029.
CLASS: Evaluate classroom quality in emotional support, organization, and instructional support domains.
DAYC-2: Track student growth in vocabulary, communication, and cognitive skills.
DECA: Measure social-emotional development and protective factors.
Executive functioning tools: Monitor student growth in attention, self-regulation, and problem-solving.
Attendance: Track chronic absenteeism to ensure regular participation in early learning experiences.</td></tr>
</table>

Partnership Omaha Public Schools, Educare, Buffett Early Childhood Institute

2.4 Partnership with IEC and Child Care Centers at the Learning Community Centers of North and South Omaha	
2.4 Partnership with IEC and Child Care Centers at the Learning Community Centers of North and South Omaha – The districts in the Learning Community of Douglas and Sarpy Counties will collaborate with Omaha Public Schools' Intensive Early Childhood Partnership and local agencies to strengthen partnerships with childcare centers near the North and South Learning Community Centers. The goal is to extend high-quality early learning practices into community-based settings, improving school readiness and long-term educational outcomes for children from high-poverty backgrounds. 2.4.1 By 2029 at least 15 childcare centers in proximity to the North and South Centers will participate in ongoing professional development and coaching through partnerships with IEC staff and Learning Community facilitators. 2.4.2 By 2029, participating centers will demonstrate measurable improvement in classroom quality, with CLASS score in emotional support, classroom organization, and instructional support meeting or exceeding national thresholds. 2.4.3 By 2029, at least 70% of childcare staff engaged in Rooted in Relationships or coaching cycles will report increased confidence and skills in supporting children's social-emotional and language development. 2.4.4 By 2029, children attending partner childcare centers will show measurable growth in DAYC-2 developmental domains (language, cognitive, communication) and DECA protective factors (initiative, self-control, attachment). For more information about the program, please see the annual report: www.learningcommunityds.org.	
Strategies/Activities: • Leverage the **IEC Community Facilitator role** to engage childcare centers near the North and South Learning Community Centers, building trust and providing professional development. • Expand the **Rooted in Relationships program** to include additional centers, focusing on social-emotional development, responsive caregiving, and family engagement practices. • Provide **CLASS observations and feedback cycles** in participating centers to drive continuous quality improvement. • Offer **joint professional learning communities** between IEC teachers and childcare providers to share strategies and strengthen alignment.	**Evaluation Plan** • CLASS observations: Monitor classroom quality and improvements in instructional practices. • DAYC-2 and DECA assessments: Track growth in children's developmental and social-emotional outcomes in partner centers. • Childcare staff surveys: Measure increased knowledge, skills, and confidence in supporting children's learning. • Family engagement data: Track referrals and connections from childcare centers to Learning Community Navigators and parent education programs.

• Connect childcare centers with Learning Community Navigators to help families access parenting education, ESL/GED, and workforce development opportunities. • Collaborate with OPS and Buffett Early Childhood Institute to align training and resources across systems.	
Partnerships Omaha Public Schools, Buffett Early Childhood Institute, Educare, Rooted in Relationships (Nebraska Children & Families Foundation), Project Harmony, OneWorld Community Health Centers, Family Housing Advisory Services, and local childcare providers in North and South Omaha.	

2.5 Workforce Development Initiative at the Learning Community Centers of North and South Omaha	
2.5 Workforce Development Initiative at the Learning Community Centers of North and South Omaha – The districts in the Learning Community of Douglas and Sarpy Counties will collaborate to identify effective strategies for expanding workforce development opportunities that strengthen the capacity of parents to achieve educational advancement, economic stability, and improved family well-being—directly supporting children's learning outcomes. 2.5.1 By 2029 at least 250 parents will complete workforce development pathways, including GED completion, certificates, and career readiness credentials. 2.5.2 By 2029, at least 70% of participants will report improved employment, enrollment in higher education, or increased wages as a result of their training. 2.5.3 By 2029, participants will demonstrate measurable gains in digital literacy, financial literacy, and workforce readiness skills as evidenced by course completion and post-training surveys. 2.5.4 By 2029, parents participating in workforce programming will also report increased capacity to support their children's education, as measured through navigator surveys and follow-up interviews. For more information about the program, please see the annual report: www.learningcommunityds.org.	
Strategies/Activities • Partner with **Metropolitan Community College, Heartland Workforce Solutions, and other community agencies** to expand certificate and credentialing opportunities in high-demand fields. • Provide **on-site workforce development classes** at the North and South Centers and OPS satellite locations, including bilingual instruction and flexible scheduling.	**Evaluation Plan** • **Certificates and credential tracking** (customer service, workforce ethics, GED completion, digital literacy). • **Participant employment/education follow-up surveys** to measure changes in income, employment, or continued education. • **Navigator data** on family progress in self-sufficiency and stress reduction.

• Integrate **career coaching, resume building, interview preparation, and job search strategies** to ensure workforce readiness. • Offer **digital literacy, financial literacy, and entrepreneurship courses** to broaden pathways for parents and promote long-term self-sufficiency. • Connect workforce participants to **Educational and Social Assistance Navigators** to align family economic goals with children's educational success.	• **Parent feedback surveys** to capture perceived impact on ability to support children's education.
Partnerships University of Nebraska at Omaha, Creighton University Metropolitan Community College, Heartland Workforce Solutions, Latino Center of the Midlands, Family Housing Advisory Services, Empowerment Network, Project Harmony, and other local workforce and community partners.	

Section 3: Metropolitan Omaha Education Consortium (MOEC) Collective Impact (CI) Achievement Plan

<table>
<tr><td colspan="2">CAP Goal
3.1 Students and families are engaged in high-quality early childhood experiences, so they are successful in the primary grades.</td></tr>
<tr><td>Strategies/Activities
A MOEC work group on Early Literacy has worked with 11 school districts and national consultants to better embed the Science of Reading into school curricula.
MOEC has supported more than 130 teachers in a semester-long workshop/course related to early literacy that was offered 5 times throughout the past 2 years.
MOEC has collaborated with Buffet Early Childhood Institute, as well as select school districts, to develop a data collection process for the metric regarding the number of children enrolled in a high-quality early childhood program, and they implemented a pilot for the data collection process, with the intention of expanding to all schools in the next two years and provided documentation throughout the process.</td><td>Evaluation Plan
Data for the following metrics, except the first one, are being collected:
Children enrolling in school-based Pre-K or kindergarten who are at age-appropriate developmental milestones or had been enrolled in a high-quality early childhood program.
Early childhood teachers who are properly credentialed: Data for 2024: 86% total, 45 to 100% district range.
Entering kindergarten students meeting the state-approved threshold for a student to be progressing toward future reading success: Data for 2024: 50% total, 8 to 95% district range.
Students who meet expectations for proficiency in literacy by the end of 3rd grade: Data for 2024: 61% total, 40 to 93% district range.
<u>NOTE</u>: Data includes aggregated metrics for all MOEC districts.</td></tr>
<tr><td colspan="2">Partnerships
The 11 school districts in Nebraska: Bellevue, Bennington, Douglas County West, Elkhorn, Gretna, Millard, Omaha, Papillion LaVista, Ralston, Springfield-Platteview, Westside; one school district in Iowa: Council Bluffs. Philanthropic support from local foundations. UNO College of Education, Health, and Human Services; Buffett Early Childhood Institute; Nebraska Department of Education.</td></tr>
</table>

CAP Goal

3.2 Students complete P-12 education and are prepared to successfully engage in a career pathway.

Strategies/Activities

- The Metropolitan Omaha Education Consortium (MOEC) regularly convenes cross-district work groups related to early literacy, mathematics, FAFSA completion, and dual enrollment.
- MOEC is leading multiple attendance improvement cohorts that bring together school teams from several districts and all grade levels to work together to improve school attendance in their own building, with the goal of decreasing the chronic absence rate in the metro.
- MOEC is supporting a Saturday conference for metro-area K-8 mathematics educators to engage in rich professional learning and networking with the goal of improving math instruction and student success.
- MOEC is advancing dual enrollment by advocating for streamlined approval processes for high school instructors; collaborating with public schools, higher education institutions, and community partners to expand course offerings; and raising awareness among families and students about the benefits and career pathways connected to dual enrollment opportunities.
- MOEC includes representatives from member postsecondary institutions UNO, Metro Community College, and Iowa Western Community College on all work groups and most task force groups. The collaboration has especially positive outcomes in conversations about dual enrollment in high school and in work to improve student success in high school math classes. Monthly meetings include leaders of 12 school districts, two service units and three postsecondary institutions to share challenges and successes.

Evaluation Plan

Data for the following metrics are being collected:

- Students who meet expectations for proficiency in literacy (ELA) by the end of 8th grade: Data for 2024: 62% total, 38 to 91% district range.
- Students who meet expectations for proficiency in math by end of 8th grade: Data for 2024: 53% total, 21 to 90% district range.
- Students who meet expectations for proficiency in literacy (ELA) by the end of 11th grade: Data for 2024: 44% total, 20 to 80% district range.
- Students who meet expectations for proficiency in mathematics by the end of 11th grade: Data for 2024: 40% total, 14 to 76% district range.
- Students who graduate from high school having successfully completed four years of math: Data for 2024: 50% total, 20 to 100% district range.
- High school freshmen who are on track to graduate by the end of 9th grade: Data for 2024: 82% total, 62 to 100% district range.
- Number of students who missed 10% or more days of school during the year: Data for 2024: 25% total, 7 to 41% district range.
- Students enrolled in postsecondary education within a year of high school graduation who are academically prepared for math: Class of 2024: 37% total; 18 to 72% district range.
- Students enrolled in postsecondary education within a year of high school graduation who are academically prepared for English: Class of 2024: 39% total; 24 to 78% district range
- Teachers/instructors approved to teach dual enrollment courses: Data for 2024: 17% total, 10 to 37% district range.

	• Students who complete at least one dual enrollment course prior to high school graduation: Data for 2024: 48% total, 1 to 88% district range. NOTE: Data includes aggregated metrics for all MOEC districts.
Partnerships The 11 school districts in Nebraska: Bellevue, Bennington, Douglas County West, Elkhorn, Gretna, Millard, Omaha, Papillion LaVista, Ralston, Springfield-Platteview, Westside; one school district in Iowa: Council Bluffs. Postsecondary institutions in Nebraska: University of Nebraska at Omaha, Metropolitan Community College; postsecondary institution in Iowa: Iowa Western Community College. Philanthropic support from local foundations. Nebraska Department of Education.	

CAP Goal

3.3 Students complete postsecondary experiences prepared for career success.

Strategies/Activities

- The Metropolitan Omaha Education Consortium (MOEC) collaborates with postsecondary partners to share and analyze data on persistence, credit completion, and degree attainment, using insights to inform K–12 preparation and student supports.
- MOEC engages in joint initiatives with higher education institutions to align high school coursework, dual enrollment, and general education requirements to reduce remediation and accelerate degree completion.
- MOEC has been invited to participate in the development of a Nebraska partnership with the National College Attainment Network (NCAN) to apply best practices in supporting college access, persistence, and completion for underrepresented students throughout the state.

Evaluation Plan

Data for the following metrics are being collected:

- Students enrolled in any postsecondary institution within a year of high school graduation: Class of 2023: 64% total; 35 to 86% district range.
- Students who successfully complete math program/degree requirements by the end of the first year of postsecondary education: Class of 2023: 40% total; 28 to 67% district range.
- Students who successfully complete English program/degree requirements by the end of the first year of postsecondary education: Class of 2023: 64% total; 55 to 83% district range.
- Recent high school graduates who persist from first term to second term in postsecondary education: Class of 2023: 90% total; 78 to 100% district range.
- Graduates who complete a 4-year postsecondary degree within 150% of expected time: Class of 2017: 36% total; 20 to 67% district range.
- Graduates who complete a 2-year postsecondary degree within 150% of expected time: Class of 2020: 6% total; 3 to 59% district range.

NOTE: Data includes aggregated (and range) metrics for MOEC high school graduates attending MOEC postsecondary institutions; most of the data points do not measure post high school performance of students who attend other postsecondary institutions.

Partnerships

The 11 school districts in Nebraska: Bellevue, Bennington, Douglas County West, Elkhorn, Gretna, Millard, Omaha, Papillion LaVista, Ralston, Springfield-Platteview, Westside; one school district in Iowa: Council Bluffs. Postsecondary institutions in Nebraska: University of Nebraska at Omaha, Metropolitan Community College. Postsecondary institution in Iowa: Iowa Western Community College. Philanthropic support from local foundations.

CAP Goal

3.4 Business and community partners are engaged in collaborations with educators to create career and employment opportunities.

Strategies/Activities

The Metropolitan Omaha Education Consortium's (MOEC) work with business, community, and postsecondary partners is still in the early stages, but these collaborations are essential for preparing students for future careers. Initial efforts focus on building connections with the Greater Omaha Chamber, local employers, and higher education institutions to explore opportunities for work-based learning and career pathway development.

- MOEC is beginning conversations with the Greater Omaha Chamber of Commerce and other community partners to explore ways to connect students with local career pathways and work-based learning opportunities.
- MOEC will share information and best practices across districts regarding existing business–school partnerships (e.g., internships, job shadowing, career fairs) to identify scalable models for broader implementation.
- MOEC will continue to invite employers and community representatives to participate in task force discussions where career readiness and workforce alignment are emerging topics of focus.
- MOEC will explore opportunities to collaborate with postsecondary partners and employers on pilot programs that provide students with early exposure to industry-recognized credentials.

Evaluation Plan

Data for one of the following metrics are being collected while the rest are under development:

- Number of unfilled teaching positions: Data for 2024: 3% total, range of 0% to 9% by district.
- Students who participate in high school pre-apprenticeship/ internship experiences.
- Students who complete an industry-recognized credential or degree by high school graduation before transition to a career, military or higher education.
- Students who participate in postsecondary internships, apprenticeships, clinical practices, and other experiential training opportunities that lead to employment.

Partnerships

The 11 school districts in Nebraska: Bellevue, Bennington, Douglas County West, Elkhorn, Gretna, Millard, Omaha, Papillion LaVista, Ralston, Springfield-Platteview, Westside; one school district in Iowa: Council Bluffs. Postsecondary institutions in Nebraska: University of Nebraska at Omaha, Metropolitan Community College. Postsecondary institution in Iowa: Iowa Western Community College. Greater Omaha Chamber of Commerce.

Section 4: Superintendents' Attendance Plan

<table>
<tr><td colspan="2">CAP Goal: To improve student attendance and learning by offering assistance to youth and families, accomplished by early assessment and prompt delivery of coordinated interventions that promote school attendance and decrease at-risk behaviors.</td></tr>
<tr><td>Strategies/Activities
This plan operationalizes the Superintendents' statutory responsibility to lead a collaborative, preventative, and restorative response to chronic absenteeism, as outlined in NRS 79-209 and supported by the LC Coordinating Council. The Metropolitan Omaha Education Consortium (MOEC) will:
Coordinate cross-district implementation of the Superintendents' Attendance Plan, emphasizing early intervention and community-based solutions to attendance.
Convene monthly, semi-annual, and annual meetings of the MOEC School Attendance Workgroup, comprised of Student Services leaders and district-appointed representatives, to share data, monitor trends, and identify effective strategies.
Host annual multi-sector convenings that include juvenile court, county attorneys, DHHS, probation, Region VI, school districts, and nonprofit partners to review system data and determine aligned responses.
Ensure alignment with Multi-Tiered Systems of Support (MTSS) frameworks across districts, building consistent, proactive supports at Tier I, II, and III levels, including case conferencing, restorative justice practices, and academic interventions.
Support implementation of district-specific collaborative attendance plans prior to any legal referral, in compliance with state law and informed by best practices in prevention and diversion.</td><td>Evaluation Plan
MOEC will collect and report the following information to the Learning Community Coordinating Council annually:
Aggregated school attendance rates by grade level (based on data collected by Nebraska Department of Education).
Data on legal agency disposition of school-district referrals to county attorneys.
A list of current recognized community support organizations.
A summary of successes and challenges incurred in the prior academic year.</td></tr>
<tr><td colspan="2">Partnerships: Systems-level collaboration and partnerships across education, justice, health, and human services sectors: The 11 school districts in Nebraska: Bellevue, Bennington, Douglas County West, Elkhorn, Gretna, Millard, Omaha, Papillion LaVista, Ralston, Springfield-Platteview, and Westside; Douglas and Sarpy County Attorneys' Offices; Juvenile Courts and Juvenile Assessment Centers; DHHS; NDE; multiple community-based organizations.</td></tr>
</table>

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STATE BOARD OF EDUCATION
RULES AND REGULATIONS COMMITTEE REPORT

Date: January 8, 2026

The Rules and Regulations Committee reports on January 8, 2026, meeting of the committee. Members present were chair Maggie Douglas, vice chair Liz Renner, Elizabeth Tegtmeier, and Kirk Penner.

Committee members reviewed the Report on Rules and Committee Report. Ami Huff explained the revisions to the report.

The committee reviewed revisions to Rule 13, Regulations and Procedures for Exempting Schools For Which Parents Elect Not To Meet Legal Requirements for School Approval and Accreditation. The public hearing was held on December 19, 2025. Committee members asked if the FAQs could be revised to include guidance on filing promptly when parents are going to homeschool children. The committee, having no concerns, recommends approval.

The committee reviewed revisions to Rule 51, Regulations and Standards for Special Education Programs. The public hearing was held on December 17, 2025. The committee, having no concerns, recommends approval.

NDE staff provided information on Rule 19, School Enrollment, specifically the Enrollment Option Program. The committee recommends pursuing changes to this rule.

NDE staff provided comments from the public input draft on Rule 24, Regulations for Certification Endorsements and highlighted the changes made to the endorsements. Committee members discussed the input provided and recommend proceeding with a public hearing draft.

This concludes the Rules and Regulations Committee report.

Maggie Douglas, Chair
*Submit a printed copy to the Committee Chair and email to the Recording Secretary.

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To: Dr. Brian L. Maher, Commissioner of Education

From: Debra Holmes, Paralegal

Date: January 5, 2026

Subject: Report on Rules

Approved by the Governor and Secretary of State

Revision – Title 92, Nebraska Administrative Code, Chapter 86, *Regulations and Procedures for Public School Breakfast Program Reimbursement*

Public Hearing held:	August 18, 2025
Approved by the State Board of Education:	September 5, 2025
Approved by the Attorney General:	December 4, 2025
Approved by the Governor:	December 19, 2025
Effective Date:	January 9, 2026

Awaiting Approval by the Attorney General

Revision - Title 92, Nebraska Administrative Code, Chapter 11, *Regulations for the Approval of Prekindergarten Programs Established by School Boards or Educational Service Units and for the Issuance of Early Childhood Education Grants*

Posted for Public Input:	July 17-30, 2025
Public Hearing held:	October 15, 2025
Approved by the State Board of Education:	December 5, 2025
Approved by the Attorney General:	
Approved by the Governor:	
Effective Date:	

Revision - Title 92, Nebraska Administrative Code, Chapter 20, *Regulations for the Approval of Educator Preparation Programs*

Posted for Public Input:	July 8-22, 2025
Public Hearing held:	October 24, 2025
Approved by the State Board of Education:	December 5, 2025
Approved by the Attorney General:	
Approved by the Governor:	
Effective Date:	

Revision - Title 92, Nebraska Administrative Code, Chapter 47, *Regulations for Career Academy Programs Established by School Districts*

Public Hearing held: November 24, 2025
Approved by the State Board of Education: December 5, 2025
Approved by the Attorney General:
Approved by the Governor:
Effective Date:

Revision - Title 92, Nebraska Administrative Code, Chapter 89, *Regulations and Procedures to Incentivize ~~for the Education Innovation Fund Program~~ Distance Education ~~Equipment Reimbursement and Incentives~~*

Public Hearing held: November 6, 2025
Approved by the State Board of Education: December 5, 2025
Approved by the Attorney General:
Approved by the Governor:
Effective Date:

Hearings Held – Awaiting Approval by the State Board

Revision - Title 92, Nebraska Administrative Code, Chapter 51, *Regulations and Standards for Special Education Programs*

Posted for Public Input: October 22-28, 2025
Public Hearing held: December 17, 2025
Approved by the State Board of Education:
Approved by the Attorney General:
Approved by the Governor:
Effective Date:

Revision - Title 92, Nebraska Administrative Code, Chapter 13, *Regulations and Procedures for Exempting Schools for which Parents Elect Not to Meet Legal Requirements for School Approval and Accreditation*

Public Hearing held: December 19, 2025
Approved by the State Board of Education:
Approved by the Attorney General:
Approved by the Governor:
Effective Date:

Posted for Public Input – Awaiting Scheduling Public Hearing

Revision – Title 92, Nebraska Administrative Code, Chapter 24, *Regulations for Certificate Endorsements*

Posted for Public Input: December 4-17, 2025
Public Hearing held:
Approved by the State Board of Education:
Approved by the Attorney General:
Approved by the Governor:
Effective Date:

Information Items for December Rules and Regulations Committee Meeting

None.

Other Rules in the Revision Process

Revision - Title 92, Nebraska Administrative Code, Chapter 6, *Regulations and Standards for Uniform Sharing of Student Data, Records and Information*

Revision - Title 92, Nebraska Administrative Code, Chapter 10, *Regulations and Procedures for the Accreditation of Schools*

Revision - Title 92, Nebraska Administrative Code, Chapter 14, *Regulations and Procedures for the Legal Operation of Approved Nonpublic Schools*

Repeal - Title 92, Nebraska Administrative Code, Chapter 17, *Regulations Governing the Approval of Alternative Schools, Classes, or Programs for Expelled Students*

Revision - Title 92, Nebraska Administrative Code, Chapter 19, *Regulations Regarding School Enrollment*

Revision - Title 92, Nebraska Administrative Code, Chapter 27, *Regulations and Standards for Professional Practices Criteria*

Revision - Title 92, Nebraska Administrative Code, Chapter 28, *Professional Practices Investigations, Hearings, and Determinations by the State Board*

Revision - Title 92, Nebraska Administrative Code, Chapter 55, *Rules of Practice and Procedure for Due Process Hearings in Special Education Contested Cases*

Revision - Title 92, Nebraska Administrative Code, Chapter 91, *Regulations Governing Driver Qualifications and Operational Procedures for Pupil Transportation Vehicles*

Revision - Title 92, Nebraska Administrative Code, Chapter 92, *Regulations Governing the Minimum Equipment Standards and Safety Inspection Criteria for Pupil Transportation Vehicles*

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PROPOSED AGENDA ITEM RATIONALE

DATE: December 22, 2025

TO: Dr. Brian L. Maher
Commissioner of Education

FROM: Bryce Wilson, Finance Officer

PROPOSED AGENDA ITEM: Action Item: Proposed Revisions of Rule 13 (92 NAC 13)

AGENDA ITEM TYPE (contract/grant/rule/program/other): Rule

RATIONALE/BACKGROUND INFORMATION:
Rule 13 is the regulations and procedures for exempting schools for which parents elect not to meet the legal requirements for school approval and accreditation.

In 2024 Nebraska Revised Statute 79-1601 which made several changes to the exempt school filing requirements. Significant changes include the following:

- Allows one parent (or legal guardian) to file instead of requiring both parents.
- Added educational decisionmaker as an additional filer on behalf of students.
- Eliminates submitting grade level, monitor and curriculum information to NDE.

The NDE modified the exempt school system and updated its operating procedures to align with the changes in State law while the revisions to Rule 13 are in the process of being completed. The changes proposed in Rule 13 would align the rule with the current statute. Other proposed changes are a result of State guidance to eliminate the restatement of statute in rule and the elimination of forms included in rule.

The NDE staff sought input from several different exempt school groups that included the Nebraska Homeschool Home Educators Network, the Nebraska Christian Home Educators Association and the Catholic Homeschool Association. Primarily, the Nebraska Homeschool Home Educators Network, and the Nebraska Christian Home Educators Association provided substantial feedback and input in the revision process.

In October, and November of 2025, the Rules and Regulations Committee of the State Board of Education discussed policy issues and the need for additional revisions to Rule 13.

Based on stakeholder discussions and direction from the Rules and Regulations committee, Department staff created a public input draft of Rule 13. The public input draft was posted on the Department's website from November 6, 2025 to November 12, 2025. Substantive changes were proposed by the Nebraska Christian

Home Educators Association. The Rules and Regulations Committee discussed the public input in a November 5, 2025 meeting. Based upon that input, the draft was amended. The hearing on this draft was held on December 19, 2025. Public comment was provided by the Nebraska Christian Home Educators Association which expressed appreciation for the Department's coordinated efforts but also noted their preference for a 15 day response time instead of 30 days in sections .008.01 and .008.02. The testimony concluded by saying this preference wasn't worth holding up or slowing the progress of the rule revision. No additional public comment was received. This agenda item allows for a potential approval vote on revisions to Rule 13 at the January 2026 Board meeting. The public hearing draft and summary of the changes are attached.

PROPOSED BOARD MEETING (MONTH/YEAR): January 2026

ESTIMATED COST: $650 for filing of the public hearing notice and printing of the rule.

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: N/A
- New or Renewal: N/A
- If renewal, date of first approval: N/A

FOR NEW CONTRACTS OR OTHER CONTRACTS REQUIRING PROCUREMENT:

- Indicate the method of procurement: N/A
- Rationale for method of procurement: N/A
- Rationale for contractor selection: N/A

FOR GRANT SUBAWARDS:

- Describe the grantee selection process: N/A

**Updated 08.15.2023*

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From: William Boyd, Legal Counsel

Date: December 19, 2025

Re: Summary of Rulemaking Hearing on the Proposed Revisions to 92 NAC 13

On December 19, 2025, a hearing on the proposed revision of Title 92, Nebraska Administrative Code, Chapter 13 (Rule 13), *Regulations and Procedures for Exempting Schools for which Parents Elect not to Meet Legal Requirements for School Approval and Accreditation.* Legal Counsel William Boyd served as the hearing officer. A recording of the hearing is available at: https://www.education.ne.gov/legal/rule-hearings/.

William Boyd called the hearing to order at 9:01 a.m., introduced himself, introduced the subject of the hearing, read into the record information about the legal notice of the hearing, outlined the procedures for the hearing and for receiving written testimony, and received testimony on revisions to Title 92 Nebraska Administrative Code Chapter 13.

Summary of Testimony on the Proposed Revision of 92 NAC 13

Bryce Wilson, Nebraska Department of Education Finance Officer, presented the following related to the proposed changes to Rule 13:

- Rule 13 was adopted pursuant to Nebraska Revised Statutes §§ 79-318 and 79-1601. The purpose of the proposed revisions to Rule 13 are to reflect recent statutory changes and to align the rule with current practices. Rule 13 was last revised by the Department on May 21, 2016.
- The following are the substantive changes contained in the draft rule:
    - Allowing one parent (or legal guardian) to file instead of requiring both parents;
    - Adds educational decisionmaker as an approved filer on behalf of students;
    - Removes statutory language repeated in the Rule and removes several form attachments, consistent with other Rule revision practice; and
    - Allows for written assurance of compliance with statutes and regulations instead of requiring evidence of compliance with statutes and regulations.
- These proposed revisions have been made through collaborative efforts with exempt school stakeholders, the Rules and Regulation Committee of the State Board, and others. The communication with interested parties allowed for input and feedback at several different points in the process and helped shape the current proposed version of Rule 13.

Oral Testimony

The Department received the following oral testimony for this matter:

David Lostroh, Nebraska Christian Home Educators Association Legislative Coordinator provided the following comments:

- He expressed appreciation for the Department's coordinated efforts
- He proposes that §§ 008.01 and 008.02 contain a 15-day response time instead of the drafted 30-day response time.
- He believes that the 30-day response time may cause problems with a long delay.
- He does acknowledge that contacting the Department can resolve any problems that arise.
- His concern is that any student that is impacted could get in trouble with the local school district for truancy.
- His only other concern was that the forms remain the same and consistent, even though they will no longer be in the actual Rule.

Written Testimony

The Department received no written testimony for this matter.

Bryce Wilson provided a response to Mr. Lostroh's comments by indicating the Department will review the comment related to 15-days versus 30-days. He also indicated that the internal practice of the Department is to act as quickly as possible, oftentimes much faster than 30 days.

William Boyd thanked everyone for their time and effort and closed the hearing on Rule 13 at 9:10 a.m.

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION

CHAPTER 13 - EXEMPT SCHOOLS

001 General Information

001.01 Statutory Authority. Subdivision (5)(c) of Neb. Rev. Stat. § 79-318 authorizes the Department to establish rules and regulations which govern procedures and standards for private, denominational, and parochial schools which elect, pursuant to procedures prescribed in subsections (2) through (7) of Neb. Rev. Stat. § 79-1601, not to meet all state accreditation or approval requirements.

001.02 Scope. Schools exempted from the approval and accreditation requirements may not be entitled to some of the benefits, privileges, or services accorded or provided to approved or accredited schools by the Department.

002 Definitions. As used in this Chapter:

002.01 Commissioner means the State Commissioner of Education, whose mailing address for purposes of this Chapter is P.O. Box 94987, Lincoln, NE 68509-4987.

002.02 Educational decisionmaker has the same meaning as in Neb. Rev. Stat. § 79-1601.

002.03 Exempt school means a school which has elected not to meet approval or accreditation requirements and has complied with this Chapter and state law relating to such exemption.

002.04 Legal Guardian has the same meaning as "Guardian" in Neb. Rev. Stat. § 43-245.

002.05 Mandatory Attendance Age has the same meaning as in Neb. Rev. Stat. § 79-201.

002.06 Residence means place in which a person is actually domiciled, which is one's established home and the place to which they intend to return when absent therefrom. It is the place where a person is actually living full-time, as opposed to vacationing or visiting.

002.07 Resident means a person having residence in a place.

002.08 Resident school district means the school district in which the child is a resident.

002.09 School year has the same meaning as in Neb. Rev. Stat. § 79-101 and encompasses instruction occurring between July 1 and the following June 30.

003 Statement of Election and Assurances

003.01 General Requirement. To elect under this Chapter not to meet state approval or accreditation standards, (at least) one parent, legal guardian, or educational decisionmaker for each child of mandatory attendance age who will attend the exempt school must complete, sign, and date a Statement of Election and Assurances. The completed Statement of Election and Assurances must be filed with the Commissioner by the authorized parent representative.

003.02 Statement of Election and Assurances. The Statement of Election and Assurances form is available from the Exempt School Office or on the Exempt School Office website. The required information on the form is limited to:

003.02A The name and address of the filer signing the form;

003.02B Whether the filer is a parent, guardian, or educational decisionmaker and any accompanying documents required pursuant to Section 003.03 of this Chapter;

003.02C The name, age, and date of birth of each student for whom the form is being filed;

003.02D The name and address of the exempt school each such student will be enrolled in and attend;

003.02E The name and address of the authorized parent representative if not the filer or an acknowledgement that the filer will serve as the authorized parent representative and will fulfill the requirements in Section 004 of this Chapter;

003.02F The election and assurances required pursuant to subsection (3) of Neb. Rev. Stat. § 79-1601; and

003.02G The signature of the filer and the date the form is signed.

003.03 Supplemental Documents. A filer may be required to submit supplemental documents with the Statement of Election and Assurances pursuant to this Section or Section 007 of this Chapter. If a filer is a legal guardian or educational decisionmaker, supplemenal documents are required to be submitted with the Statement of Election and Assurances form as follows:

003.03A Legal Guardian(s). If the filer is the legal guardian, a copy of the documentation lawfully appointing the filer as legal guardian must be submitted with the Statement of Election and Assurances.

003.03A1 If the guardianship arrangement is changed by a court of law subsequent to the initial filing, a copy of the court order must be provided by the filer.

003.03B Educational Decisionmaker. If the filer is an educational decisionmaker, a copy of the documentation lawfully appointing the filer as an educational decisionmaker must be submitted with the Statement of Election and Assurances.

003.03B1 If the educational decisionmaker arrangement is changed by a court of law subsequent to the initial filing, a copy of the court order must be provided by the filer.

004 Authorized Parent Representative

004.01 Authorized Parent Representative Responsibilities. The parent(s), legal guardian(s), and educational decisionmaker(s) for the children who attend or will attend the exempt school must designate an authorized parent representative. The authorized parent representative must:

004.01A By July 15 of each year the exempt school will be in operation, file with the Commissioner (i) a completed and signed Statement of Election and Assurances for each child who will attend the exempt school; and (ii) a completed, signed, and dated Authorized Parent Representative form.

004.01A1 A parent, legal guardian, or educational decisionmaker for a child who was not a resident of a Nebraska school district as of July 15 of any school year in which the parent, legal guardian, or educational decisionmaker elects to have such child enroll and attend a school established or to be established under this Chapter, must cause the authorized parent representative designated under this Section to promptly file the Statement of Election and Assurances and Authorized Parent Representative form after the child has established a residence in Nebraska.

004.01A2 A parent, legal guardian, or educational decisionmaker for any child about to be or presently enrolled in an approved or accredited Nebraska school, who, after July 15, electsto have such child enroll and attend a school established or to be established under this Chapter, must cause the authorized parent representative designated under Section 004.01 of this Chapter to promptly file a Statement of Election and Assurances and Authorized Parent Representative form.

004.01B Additional enrollment(s) during the school year: The authorized parent representative must promptly submit to the Commissioner a Statement of Elec-

tion and Assurances form from a parent, legal guardian, or educational decisionmaker for each additional enrollment and any additional documentation specified in this Chapter for additional enrollment(s) during the school year.

004.01C Discontinuation of enrollment during the school year: The authorized parent representative must promptly inform the Commissioner in writing, by mail or electronically, if any child discontinues enrollment during the school year pursuant to Section 008 of this Chapter.

004.01D Change of authorized parent representative during the school year: The parent(s), legal guardian(s), or educational decisionmaker(s) must designate a new authorized parent representative who must promptly submit a new Authorized Parent Representative form if the authorized parent representative changes during the school year.

004.01E Address change(s) during the school year: The authorized parent representative must promptly notify the Commissioner in writing, by mail or electronically, if the address of a parent, legal guardian, educational decisionmaker, authorized parent representative, or exempt school changes during the school year.

004.02 Authorized Parent Representative Form. The Parent Representative Authorization form is available from the Exempt School Office or on the Exempt School Office website and must be completed, signed, dated, and filed with the Commissioner by the authorized parent representative for each exempt school. The required information on the form is limited to:

004.02A The name, address, and contact information for the authorized parent representative;

004.02B The name, address and contact information for the exempt school;

004.02C Assurances that the authorized parent representative accepts the appointment and agrees to carry out the duties of an authorized parent representative pursuant to Neb. Rev. Stat. § 79-1601 and this Chapter; and

004.02D The signature of the authorized parent representative and the date such authorization was signed.

005 Notice of Acknowledgment. Upon receipt by the Commissioner of a properly completed and signed Statement of Election and Assurances for each child enrolled in an exempt school and a properly completed and signed Authorized Parent Representative form, the election to operate an exempt school is effective, and the Commissioner will direct that a notice acknowledging such receipt be sent, either electronically or by mail, to the authorized parent representative and reported to each school district where a child attending such exempt school resides.

006 Failure to Provide Information or Meet Requirements. Failure of the authorized parent representative to provide the information required by this Chapter, or failure to meet any of the other requirements of this Chapter, may cause the Commissioner to direct that a notice be sent, either electronically or by mail, to the authorized parent representative, any parent, legal guardian, or educational decisionmaker for a child enrolled in such school, and the school district in which any such child resides. Any such notice must state that the school has not met the requirements of this Chapter and therefore will not be deemed an exempt school for purposes of Neb. Rev. Stat. § 79-201, which may subject a person who has legal or actual charge or control of such child to prosecution thereunder or under any other statutes relating to mandatory attendance.

007 Birth Certificate. Pursuant to subsection (3) of Neb. Rev. Stat. § 43-2007 (part of the Missing Children Identification Act), upon enrollment of a child in an exempt school, the parent or legal guardian of such child must provide to the Commissioner either (a) a certified copy of the child's birth certificate or (b) other reliable proof of the child's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate. Upon failure of the parent or legal guardian to comply, the Commissioner must notify such parent or legal guardian in writing that unless he or she complies within ten days the matter must be referred to the local law enforcement agency for investigation. If compliance is not obtained within such ten-day period, the Commissioner must immediately report such matter.

008 Completion of the Program of Instruction and Withdrawal From an Exempt School.

008.01 Completion of the Program of Instruction: A parent, legal guardian, or educational decisionmaker for a child enrolled in an exempt school who is less than eighteen (18) years of age and who has completed the program of instruction offered by such exempt school may complete, sign, and date a Report of Completion. The authorized parent representative must file any Report of Completion for a student enrolled in the exempt school with the Commissioner. The Report of Completion form is available from the Exempt School Program Office or on the Exempt School Program Office website. Upon receipt of the properly completed, signed, and dated form, the Commissioner will direct that an acknowledgment of such receipt be sent within 30 days, either electronically or by mail, to the parent, legal guardian, or educational decisionmaker and that such receipt be reported to the school district where the child resides to indicate that the child is no longer subject to mandatory attendance requirements effective as of the date the Commissioner received the form.

008.02 Withdrawal From an Exempt School: A person who has legal or actual charge or control of a child enrolled in an exempt school who is at least sixteen (16) years of age, but is less than eighteen (18) years of age, and who has not completed the program of instruction offered by such exempt school may withdraw such

child from such school by completing, signing, and dating a Withdrawal From Exempt School form. The authorized parent representative must file any Withdrawal From Exempt School form for a student enrolled in the exempt school with the Commissioner pursuant to subsection (6) of Neb. Rev. Stat. § 79-202. The Withdrawal From Exempt School form is available from the Exempt School Program Office or on the Exempt School Program Office website. Upon receipt of the properly completed, signed, and dated form, the Commissioner will direct that an acknowledgment of such receipt be sent within 30 days, either electronically or by mail, to the person who has legal or actual charge or control of such child and that such receipt be reported to the school district where such child resides to indicate that the child is exempt from mandatory attendance requirements effective as of the date the Commissioner received the form. Completion of a Withdrawal From Exempt School form is not required for any child who is enrolling in another school.

TITLE 92, CHAPTER 13
NEBRASKA DEPARTMENT OF EDUCATION

FORM A: Parent or Legal Guardian Form

STATEMENT OF ELECTION AND ASSURANCES

A separate Form A shall be completed by each parent or legal guardian

Parent or Legal Guardian Information

First Name/Middle Initial	Last Name	
Address		
City	**State**	**Zip Code**
Mailing Address (if different from residential address)		
City	**State**	**Zip Code**
School District of Residence	**County of Residence**	
Email Address (optional) _____@_____._____	**Phone Number (optional)** (_____) _____-_____	

Select One
1. ❒ Initial (First) Year 2. ❒ Renewing from Previous School Year
3. ❒ Filed in the past, but not during the previous school year (last school year filed: _____)
4. ❒ Adding a child to the current school year exempt school roster
(only applies if already filed/received exempt status for another child(ren) for the current school year)

Student(s) attending the exempt school (attach separate page if additional space is needed)

Student's First & Last Name	Age	Date of Birth
1	_____	_____/_____/_____
2	_____	_____/_____/_____
3	_____	_____/_____/_____
4	_____	_____/_____/_____
5	_____	_____/_____/_____
6	_____	_____/_____/_____

Name & Address of the Exempt School

Exempt School Name		
Physical Address (if different from above)		
City	**State**	**Zip Code**

Statement of Election (select one)

❒ The requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education violate my sincerely held religious beliefs.

❒ The requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education interfere with my decisions in directing my child(ren)'s education; and I am aware that under this election exempt schools must comply with the immunizations requirements in Section 79-217 of the Revised Statutes of Nebraska with exception as provided in Sections 79-221 and 79-222.

Designation of Parent Representative (select one)

❒ I will serve as my own Representative and fulfill the responsibilities of the Parent Representative.

❒ I will not serve as my own Representative. I hereby designate the following individual as the exempt school Parent Representative:

First Name/Middle Initial	Last Name

As the undersigned parent or legal guardian, I affirm and agree:

The Parent Representative will annually, by July 15, or as otherwise required by 92 NAC 13 (Rule 13) Sections 003.02A1-003.02A2, submit to the Department of Education this Statement (Form A) and information to show that the students are enrolled and attending pursuant to compulsory attendance laws by submitting the exempt school period as demonstrated by the Start Date and End Date; and will promptly notify the Commissioner of any changes in student enrollment and address; and

A program of sequential instruction in the language arts, mathematics, science, social studies, and health is being provided; and

I have satisfied myself that the individual(s) monitoring instruction at this school are qualified to monitor instruction in the basic skills as listed in the paragraph above, and that such individuals have demonstrated an alternative competency to monitor instruction or supervise children; and

I further understand that this school is not Approved or Accredited by the State of Nebraska.

The statements contained in this document are true and accurate and I am the Parent or Legal Guardian listed at the top of this form. I further understand that providing false information or signature could carry criminal penalties under Nebraska Law.

Signed this _____ day of

_____, 20____

_____
Signature of Parent or Legal Guardian

Instructions: A separate copy of this form must be properly completed by each parent or legal guardian of the child(ren) named on this form and provided to the parent representative for filing with the Commissioner of Education (refer to Chapter 13, Section 003.01). A parent filing as a single parent should consult Section 003.01A. Form A is required by Chapter 13, therefore, an altered Form A will not be accepted.

TITLE 92, CHAPTER 13
NEBRASKA DEPARTMENT OF EDUCATION

FORM B: Parent Representative Form

AUTHORIZED PARENT REPRESENTATIVE FORM

(also known as the exempt school's principal or administrator)

[The Form B is completed by one person per Exempt School]

Parent Representative Information

First Name/Middle Initial	**Last Name**	
Address		
City	**State**	**Zip Code**
Mailing Address (if different from residential address)		
City	**State**	**Zip Code**
Email Address (optional) _____@_____._____	**Phone Number (optional)** (_____) _____-_____	

Exempt School Information

Exempt School Name		
Address		
City	**State**	**Zip Code**
Mailing Address (if different from residential address)		
City	**State**	**Zip Code**
Email Address (optional) _____@_____._____	**Phone Number (optional)** (_____) _____-_____	

I do hereby accept such appointment and agree to carry out the duties assigned to me by 79-1601 R.R.S. and Title 92, Nebraska Administrative Code, Chapter 13.

I understand that such duties shall include:

1. Securing and submitting to the Commissioner information specified in Chapter 13 regarding student enrollment and attendance, monitors, and the sequential program of instruction.
2. Making arrangements with the exempt school operators in the event that a school visit and/or testing is requested by the Commissioner.

I affirm that I have attached a Statement of Election and Assurances (Form A) signed by each parent or legal guardian of a child who is of mandatory attendance age enrolled in the school.

The statements contained in this document are true and accurate and I am the designated Parent Representative listed at the top of this form. I further understand that providing false information or signature could carry criminal penalties under Nebraska Law.

Signed this _____ day of

_____, 20____

_____

Signature of Parent Representative

Instructions: The parent representative sends this properly completed form to the Commissioner of Education by July 15 or as otherwise required by Chapter 13, Sections 003.02A1-003.02A2 with a properly completed Statement of Election and Assurances (Form A) for each parent or legal guardian of a child who is of mandatory attendance age enrolled in the school. See Chapter 13, Section 003.02 for further information. Form B is required by Chapter 13, therefore, an altered Form B will not be accepted.

TITLE 92, CHAPTER 13
NEBRASKA DEPARTMENT OF EDUCATION

FORM C: Withdrawal of a Child(ren)

Withdrawal of a Child(ren) From the Exempt School

(who is at least 16, but less than 18 years of age)

Completed by a parent or legal guardian (or person with legal or actual charge or control of the child)

Parent or Legal Guardian Information

First Name/Middle Initial	Last Name	
Address		
City	State	Zip Code
Mailing Address (if different from residential address)		
City	State	Zip Code
School District of Residence	County of Residence	
Email Address (optional) _____@_____._____	Phone Number (optional) (_____) _____-_____	

Student Information

Student's First & Last Name	Age	Date of Birth
	_____	_____/_____/_____
	_____	_____/_____/_____

Exempt School Name

As the undersigned parent or legal guardian, I affirm and agree:

The child(ren) listed above has reached the age of sixteen, and is below age eighteen and, pursuant to 79-202(6) R.R.S., will withdraw from the above-listed exempt school, effective

_____/_____/_____.
(Month/Day/Year)

Signed this ____ day of _____ _____
Signature of Parent or Legal Guardian

State of Nebraska)
) ss
County of _____

The foregoing statement was signed in my presence by _____,
(Printed Name of Parent or Legal Guardian)
upon oath or affirmation that the statements contained therein were true.

(Seal) _____
Signature of Notary Public

Instructions: File a properly completed Form C with the Commissioner of Education, promptly upon withdrawal from the program. Refer to Chapter 13, Section 010.01.

TITLE 92, CHAPTER 13
NEBRASKA DEPARTMENT OF EDUCATION

FORM D: Completion of Program

Report of Completion of Program of Instruction

A Form D shall be completed by each parent or legal guardian

Parent or Legal Guardian Information

First Name/Middle Initial	**Last Name**	
Address		
City	**State**	**Zip Code**
Mailing Address (if different from residential address)		
City	**State**	**Zip Code**
School District of Residence	**County of Residence**	
Email Address (optional) _____@_____._____	**Phone Number (optional)** (_____) _____-_____	

Student Information

Student's First & Last Name	Age	Date of Birth
	_____	_____/_____/_____
	_____	_____/_____/_____

Exempt School Name

As the undersigned parent or legal guardian, I affirm and agree:

The child(ren) listed above has not reached the age of eighteen and, pursuant to 79-201 R.R.S., has completed the program of instruction offered at the above-listed exempt school, effective _____/_____/_____.

(Month/Day/Year)

The statements contained in this document are true and accurate and I am the Parent or Legal Guardian listed at the top of this form. I further understand that providing false information or signature could carry criminal penalties under Nebraska Law.

Signed this _____ day of

_____, 20____

_____

Signature of Parent or Legal Guardian

Instructions: File a properly completed Form D with the Commissioner of Education, promptly upon withdrawal from the program. Refer to Chapter 13, Section 010.02.

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION

CHAPTER 13 - EXEMPT SCHOOLS

001 General Information

001.01 Statutory Authority. Subdivision (5)(c) of Neb. Rev. Stat. § 79-318 ~~Section 79-318(5)(c) of the Revised Statutes of Nebraska (R.R.S.),~~ authorizes the Department to establish rules and regulations which govern procedures and standards for private, denominational, and parochial schools which elect, pursuant to procedures prescribed in subsections (2) through (7) ~~to (4)~~ of Neb. Rev. Stat. §~~Section R.R.S.,~~ 79-1601, not to meet all state accreditation or approval requirements.

001.02 Scope. Schools exempted from the approval and accreditation requirements may not be entitled to some of the benefits, privileges, or services accorded or provided to approved or accredited schools by the Department.

~~This Chapter provides rules and regulations governing the procedures for exemption of schools from state approval and accreditation requirements when such schools elect, pursuant to Section 79-1601 R.R.S., not to meet those requirements because they (i) would violate the sincerely held religious beliefs of the parents or legal guardians or (ii) interfere with the decisions of the parents or legal guardians in directing their child s education. This Chapter only applies to such exempt schools and is not applicable to schools which are approved or accredited pursuant to Chapters 14 and 10 of Title 92 of the Nebraska Administrative Code. Schools exempted from the approval and accreditation requirements of Chapters 14 and 10 pursuant to this Chapter shall not be considered either approved or accredited by the Department, nor shall they be entitled to any of the benefits, privileges, or services accorded or provided to approved or accredited schools by the Department.~~

~~001.03 Children Below Age Seven - Filing Requirement to the Resident Public School District (delaying entry until age seven). A parent or legal guardian of a child who will reach six years of age prior to January 1 of the then-current school year, but has not reached seven years of age (and wish to delay entry until age seven), must sign an affidavit stating that the parent or legal guardian intends for the child to participate in an Exempt School and intends to file for exempt status with the Commissioner of Education on or before the child's seventh birthday. This affidavit is to be filed by the parent or legal guardian with the~~

~~school district in which the child resides (resident public school district). Contact the resident public school district to request the affidavit form.~~

~~001.03A Parents or legal guardians of a child who will reach six years of age prior to January 1 of the then-current school year whose child will attend an exempt school must comply fully with the requirements as outlined in this Chapter, and begin educating the child accordingly.~~

~~001.04 Dual (Part-Time) Enrollment. Section 79-2,136 R.R.S. provides that public schools shall allow the part-time enrollment of students who are residents of the school district but attend an exempt (home) school. Each school board shall establish policies and procedures for part-time students and such policies and procedures may include provisions permitting the part-time enrollment of exempt school students who are not residents of the school district. Contact the local public school district regarding their policies and procedures.~~

~~001.05 Immunizations. Parents or legal guardians who specify election on Form A for other than religious reasons must comply with immunization requirements of Sections 79-217 through 79-223 R.R.S.. Regulations of the State Department of Health and Human Services promulgated under Section 79-219 R.R.S. dealing with immunizations are found in Title 173, Nebraska Administrative Code, Chapter 3.~~

002 Definitions. As used in this Chapter:

002.01 Commissioner means ~~shall mean~~ the State Commissioner of Education, whose mailing address for purposes of this Chapter is P.O. Box 94987, Lincoln, NE 68509-4987.

002.02 Educational decisionmaker has the same meaning as in Neb. Rev. Stat. § 79-1601.

002.03~~002.02~~ Exempt school means ~~shall mean~~ a school which has elected not to meet approval or accreditation requirements and has complied with this Chapter and state law relating to such exemption.

~~002.03 Initial Year of Operation shall mean a school year that is not immediately preceded by a school year for which the parents or legal guardians filed for exemption under this Chapter.~~

002.04 Legal Guardian has the same meaning as "Guardian" in Neb.

Rev. Stat. § 43-245.

002.05~~002.04~~ Mandatory Attendance Age has the same meaning as in Neb. Rev. Stat. § 79-201.~~shall mean a child that (a) will reach six (6) years of age prior to January 1 of the then-current school year, and (b) has not reached eighteen (18) years of age, except as provided in subsection (3) of Section 79-201 R.R.S.. A child that will reach six (6) years of age prior to January 1 of the then-current school year need not be enrolled in a public, private, denominational or parochial day school or a school that has elected under this Chapter not to meet accreditation or approval requirements when the provisions of this Chapter are met.~~

002.06~~002.05~~ Residence means ~~shall mean that~~ place in which a person is actually domiciled, which is one s established home and the place to which ~~he/she~~they intend~~s~~ to return when absent therefrom. It is the place where a person is actually living full-time, as opposed to vacationing or visiting.

002.07~~002.06~~ Resident means ~~shall mean~~ a person having residence in a place.

002.08 Resident school district means the school district in which the child is a resident.

002.09~~002.07~~ School year has the same meaning as in Neb. Rev. Stat. § 79-101 and encompasses ~~shall mean, for the purposes of this Chapter, the period of~~ instruction occurring between July 1 and the following June 30.

003 Statement of Election and Assurances

~~003.01 Form A: Parent or Legal Guardian Statement of Election and Assurances. To elect under this Chapter not to meet state approval or accreditation standards and to obtain exemption from provisions of compulsory attendance requirements relating to attendance at a state approved or accredited school, each of the parents or legal guardians of the children who will attend the exempt school and who are of mandatory attendance age must complete and sign a separate Form A: Parent or Legal Guardian Statement of Election and Assurances (see Appendix A).~~

~~003.01A Single Parent. If the filer is a single parent, that parent must complete a Form A and provide sole custody verification. A~~

~~parent claiming to be a single parent is representing that he or she alone is responsible for making the decisions concerning the educational placement of the child(ren). Sole custody verification includes (but is not limited to): an order of a court of law having proper jurisdiction providing that the filing parent has sole custody of the child(ren), a birth certificate that lists only the filing parent as the parent, or a death certificate if one of the parents is deceased.~~

~~003.01A1 If the custody arrangement is changed by a court of law subsequent to the initial filing, a copy of that court order must be provided by the single parent filer.~~

~~003.01A2 If the court order specifies joint legal custody, both parents must complete a Form A, unless the court order provides that the custodial parent has sole educational decision-making authority. In that case, a copy of that court order must be provided.~~

~~003.01B Legal Guardian(s). If the filer is the legal guardian(s), a copy of the documentation lawfully appointing the filer(s) as legal guardian(s) must be submitted with the completed Form A(s).~~

003.01 General Requirement. To elect under this Chapter not to meet state approval or accreditation standards, (at least) one parent, legal guardian, or educational decisionmaker for each child of mandatory attendance age who will attend the exempt school must complete, sign, and date a Statement of Election and Assurances. The completed Statement of Election and Assurances must be filed with the Commissioner by the authorized parent representative.

003.02 Statement of Election and Assurances. The Statement of Election and Assurances form is available from the Exempt School Office or on the Exempt School Office website. The required information on the form is limited to:

003.02A The name and address of the filer signing the form;

003.02B Whether the filer is a parent, guardian, or educational decisionmaker and any accompanying documents required pursuant to Section 003.03 of this Chapter;

003.02C The name, age, and date of birth of each student for whom the form is being filed;

003.02D The name and address of the exempt school each such student will be enrolled in and attend;

003.02E The name and address of the authorized parent representative if not the filer or an acknowledgement that the filer will serve as the authorized parent representative and will fulfill the requirements in Section 004 of this Chapter;

003.02F The election and assurances required pursuant to subsection (3) of Neb. Rev. Stat. § 79-1601; and

003.02G The signature of the filer and the date the form is signed.

003.03 Supplemental Documents. A filer may be required to submit supplemental documents with the Statement of Election and Assurances pursuant to this Section or Section 007 of this Chapter. If a filer is a legal guardian or educational decisionmaker, supplemenal documents are required to be submitted with the Statement of Election and Assurances form as follows:

003.03A Legal Guardian(s). If the filer is the legal guardian, a copy of the documentation lawfully appointing the filer as legal guardian must be submitted with the Statement of Election and Assurances.

003.03A1 If the guardianship arrangement is changed by a court of law subsequent to the initial filing, a copy of the court order must be provided by the filer.

003.03B Educational Decisionmaker. If the filer is an educational decisionmaker, a copy of the documentation lawfully appointing the filer as an educational decisionmaker must be submitted with the Statement of Election and Assurances.

003.03B1 If the educational decisionmaker arrangement is changed by a court of law subsequent to the initial filing, a copy of the court order must be provided by the filer.

004 Authorized Parent Representative

004.01~~003.02~~ Authorized Parent Representative Responsibilities. The parent(s), ~~or~~ legal guardian(s), and educational decisionmaker(s) for ~~of~~ the children who attend or will attend the exempt school must ~~shall~~ designate an authorized parent representative ~~Parent Representative~~. The authorized parent representative must ~~who shall~~:

004.01A~~003.02A~~ By July 15 of each year the exempt school will be in operation, file with the Commissioner (i) a completed and signed Statement of Election and Assurances for each child who will

attend the exempt school; ~~Form A described in Section 003.01 from each parent or legal guardian (see Appendix A);~~ and (ii) ~~Form B:~~ a completed, signed, and dated Authorized Parent Representative form ~~Form (see Appendix B) with the Commissioner. In addition to the documentation above, the Parent Representative will also provide the information specified in Section 004 of this Chapter~~.

004.01A1~~003.02A1~~ A parent, legal guardian, or educational decisionmaker for a child who was ~~Parents or legal guardians and child(ren) that were~~ not a resident ~~residents~~ of a Nebraska school district as of July 15 of any school year in which the parent, legal guardian, or educational decisionmaker elects ~~they elect~~ to have such child ~~child(ren)~~ enroll and attend a school established or to be established under this Chapter, must ~~shall~~ cause the authorized parent representative designated under this Section to promptly file the Statement of Election and Assurances and Authorized Parent Representative form ~~Forms A and B~~ after the child has ~~parents or legal guardians and child(ren) have~~ established a residence in Nebraska. ~~(See Appendices A & B.)~~

004.01A2~~003.02A2~~ A parent, legal guardian, or educational decisionmaker for ~~Parents or legal guardians of~~ any child about to be or presently enrolled in an approved or accredited Nebraska school, who, after July 15, elects ~~elect~~ to have such child enroll and attend a school established or to be established under this Chapter, must ~~shall~~ cause the authorized parent representative designated under Section 004.01 of this Chapter ~~003.02~~ to promptly file a Statement of Election and Assurances and Authorized Parent Representative form. ~~Forms A and B. (See Appendices A & B.)~~

-

004.01B~~003.02B~~ Additional enrollment(s) during the school year: The authorized parent representative must ~~shall~~ promptly submit to the Commissioner a Statement of Election and Assurances form ~~Form A~~ from a ~~each~~ parent, ~~or~~ legal guardian, or educational decisionmaker for each additional enrollment and any additional ~~the~~ documentation specified in ~~Section 004 of~~ this Chapter for additional enrollment(s) during the school year.

004.01C~~003.02C~~ Discontinuation of enrollment during the school year: The authorized parent representative must ~~shall~~ promptly inform the Commissioner in writing, by mail or electronically, if any

child discontinues enrollment during the school year pursuant to ~~. See also~~ Section 008 of this Chapter ~~010~~.

004.01D~~003.02D~~ Change of authorized parent representative during the school year: The parent(s), ~~or~~ legal guardian(s), or educational decisionmaker(s) must ~~shall~~ designate a new authorized parent representative who must ~~shall~~ promptly submit a new Authorized Parent Representative form ~~Form B~~ if the authorized parent representative changes during the school year.

004.01E~~003.02E~~ Address change(s) during the school year: The authorized parent representative must ~~shall~~ promptly notify the Commissioner in writing, by mail or electronically, if the address of a parent, ~~the parents or~~ legal guardian, ~~guardians,~~ educational decisionmaker, authorized parent representative, or exempt school changes during the school year.

004.02 Authorized Parent Representative Form. The Parent Representative Authorization form is available from the Exempt School Office or on the Exempt School Office website and must be completed, signed, dated, and filed with the Commissioner by the authorized parent representative for each exempt school. The required information on the form is limited to:

004.02A The name, address, and contact information for the authorized parent representative;

004.02B The name, address and contact information for the exempt school;

004.02C Assurances that the authorized parent representative accepts the appointment and agrees to carry out the duties of an authorized parent representative pursuant to Neb. Rev. Stat. § 79-1601 and this Chapter; and

004.02D The signature of the authorized parent representative and the date such authorization was signed.

~~004 Information Summary~~~~. The parent representative will submit to the Commissioner the information described in Sections 004.01, 004.02, and 004.03 of this Chapter. For the initial year of operation, this summary will be submitted simultaneously with, but no later than 30 days after, the filings described in Section 003.02 are made. After the initial year of operation, the summary will be submitted annually by July 15. An optional document entitled, "Information Summary for Parent Representative," is designed to~~

assist a parent representative in providing this information, and is available from the Department s Exempt School Program office or website.

004.01 The exempt school period as demonstrated by the Start Date and End Date. The period of operation for the school year will allow sufficient time for the provisions of a minimum instruction of 1,080 hours in secondary schools and 1,032 hours in elementary schools. The hours of instruction may be prorated based upon the remaining balance of the school year.

004.02 A list of the names of all instructional monitors in the exempt school, which shall also include for each their age, and highest level of education completed. If any new monitors are added during the school year, the same information for such persons shall be promptly submitted in writing to the Commissioner. If any monitors leave during the school year, this shall also be promptly submitted in writing to the Commissioner.

004.03 A written description or summary showing the sequential program of instruction designed to lead to basic skills in the language arts, mathematics, science, social studies, and health, which shall include a list of classes or courses, the name of the monitor(s) responsible for instructing or monitoring, and the grade levels being included in the exempt school.

005 Notice Letter of Acknowledgment. Upon receipt by the Commissioner of a properly completed and Form A signed Statement of Election and Assurances for each child enrolled in an exempt school and by all parents or legal guardians, a properly completed and Form B signed Authorized Parent Representative form, by the authorized parent representative, and the information required in Section 004, the election to operate an exempt school is effective, and the Commissioner will direct that a notice letter acknowledging such receipt be sent, either electronically or by mail, to the authorized parent representative and reported to each the school district where a the child attending such exempt school resides. For initial year filings, the election is effective upon receipt by the Commissioner of the properly completed Forms A and B, but continued effectiveness is contingent on the receipt of the information required in Section 004.

006 Failure to Provide Information or Meet Requirements. Failure of the authorized parent representative to provide the information required by this Chapter, or failure to meet any of the other requirements of this Chapter, may cause the Commissioner to direct that a notice be sent, either electronically or by mail, to the authorized parent representative, any

parent, legal guardian, or educational decisionmaker for a child enrolled in such school, and ~~Department to notify~~ the school district in which any such ~~the~~ child resides. Any such notice must state that the school has not met the requirements of this Chapter and therefore will ~~shall~~ not be deemed an exempt school for purposes of Neb. Rev. Stat. § 79-201, ~~R.R.S.,~~ which may subject a person who has legal or actual charge or control of such child ~~the parents or legal guardians~~ to prosecution thereunder or under any other statutes relating to mandatory attendance.

~~007 Exempt School Visits~~. ~~When the Department, in order to verify information submitted pursuant to this Chapter, deems it necessary to visit the exempt school, Department officials or their designees shall contact the parent representative and a time for the visit shall be mutually established. Denial of access for this purpose, so long as pursued in this manner, shall be cause for the Department to determine that the exempt school is not meeting requirements relating to the sequential program of instruction designed to lead to basic skills in the language arts, mathematics, science, social studies, and health. Therefore, it shall not be deemed an exempt school and the procedure in Section 006 above will be initiated.~~

~~008 Student Testing~~. ~~When the Department, in order to verify information submitted pursuant to this Chapter deems it necessary to have conducted regular achievement testing of students attending the school, Department officials shall contact the parent representative and a test, a time, and a procedure shall be mutually designated and established. Denial of student testing for this purpose, so long as pursued in this manner, shall be cause for the Department to determine that the exempt school is not meeting requirements relating to the sequential program of instruction designed to lead to basic skills in the language arts, mathematics, science, social studies, and health. Therefore, it shall not be deemed an exempt school and the procedure in Section 006 above will be initiated.~~

007~~009~~ Birth Certificate. Pursuant to subsection (3) of Neb. Rev. Stat. § 43-2007 ~~Section 43-2007(3) R.R.S.~~ (part of the Missing Children Identification Act), upon enrollment of a child ~~student who is receiving his or her education~~ in an exempt school, ~~subject to sections 79-1601 to 79-1607,~~ the parent or legal guardian of such child must ~~student shall~~ provide to the Commissioner ~~of Education~~ either (a) a certified copy of the child s birth certificate or (b) other reliable proof of the child s identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate. Upon failure of the parent or legal guardian to comply, the Commissioner ~~of Education~~ must ~~shall~~ notify such parent or legal guardian in writing that unless he or she complies within ten days the matter must

~~shall~~ be referred to the local law enforcement agency for investigation. If compliance is not obtained within such ten-day period, the Commissioner must ~~shall~~ immediately report such matter.

008~~010~~ Completion of the Program of Instruction and Withdrawal From an ~~the~~ Exempt School. ~~A child of mandatory attendance age may be withdrawn from the exempt school in the following two cases:~~

~~010.01 In accordance with Section 79-202(6) R.R.S., a person who has legal or actual charge or control of a child who is at least sixteen years of age but less than eighteen years of age may withdraw such a child before graduation and be exempt from the mandatory attendance requirements by filing with the Commissioner a "Withdrawal of a Child(ren) From the Exempt School" form, attached as Appendix C (Form C), in the presence of and acknowledged by a notary public upon oath or affirmation. Upon receipt of the properly completed Form C, the Commissioner will direct that a letter acknowledging such receipt be sent and reported to the school district where the child resides.~~

~~010.02 If the child is below 18 and has completed the program of instruction offered by the exempt school, then each parent or legal guardian shall sign a "Report of Completion of Program" form, attached as Appendix D (Form D). Upon receipt of the properly completed Form D signed by the parents or legal guardians, the Commissioner will direct that a letter acknowledging such receipt be sent to the parents or legal guardians and reported to the school district where the child resides.~~

~~010.02A Single Parent. If the filer is a single parent, that parent must complete a Form D and provide sole custody verification. A parent claiming to be a single parent is representing that he or she alone is responsible for making the decisions concerning the educational placement of the child. Sole custody verification includes (but is not limited to): an order of a court of law having proper jurisdiction providing that the filing parent has sole custody of the child, a birth certificate that lists only the filing parent as the parent, or a death certificate if one of the parents is deceased.~~

~~010.02A1 If the custody arrangement is changed by a court of law subsequent to the initial filing, a copy of that court order must be provided by the single parent filer.~~

~~010.02A2 If the court order specifies joint legal custody, both parents must complete a Form D, unless the court order~~

~~provides that the custodial parent has sole educational decision-making authority. In that case, a copy of that court order must be provided.~~

~~010.02B Legal Guardian(s). If the filer is the legal guardian(s), a copy of the documentation lawfully appointing the filer(s) as legal guardian(s) must be submitted with the completed Form D(s).~~

008.01 Completion of the Program of Instruction: A parent, legal guardian, or educational decisionmaker for a child enrolled in an exempt school who is less than eighteen (18) years of age and who has completed the program of instruction offered by such exempt school may complete, sign, and date a Report of Completion. The authorized parent representative must file any Report of Completion for a student enrolled in the exempt school with the Commissioner. The Report of Completion form is available from the Exempt School Program Office or on the Exempt School Program Office website. Upon receipt of the properly completed, signed, and dated form, the Commissioner will direct that an acknowledgment of such receipt be sent within 30 days, either electronically or by mail, to the parent, legal guardian, or educational decisionmaker and that such receipt be reported to the school district where the child resides to indicate that the child is no longer subject to mandatory attendance requirements effective as of the date the Commissioner received the form.

008.02 Withdrawal From an Exempt School: A person who has legal or actual charge or control of a child enrolled in an exempt school who is at least sixteen (16) years of age, but is less than eighteen (18) years of age, and who has not completed the program of instruction offered by such exempt school may withdraw such child from such school by completing, signing, and dating a Withdrawal From Exempt School form. The authorized parent representative must file any Withdrawal From Exempt School form for a student enrolled in the exempt school with the Commissioner pursuant to subsection (6) of Neb. Rev. Stat. § 79-202. The Withdrawal From Exempt School form is available from the Exempt School Program Office or on the Exempt School Program Office website. Upon receipt of the properly completed, signed, and dated form, the Commissioner will direct that an acknowledgment of such receipt be sent within 30 days, either electronically or by mail, to the person who has legal or actual charge or control of such child and that such receipt be reported to the school district where such child resides to indicate that the child is exempt from mandatory attendance requirements effective as of the date the Commissioner received the form. Completion of a Withdrawal From Exempt School form is not required for any child who is enrolling in another school.

FORM A: Parent or Legal Guardian Form

FORM B: Parent Representative Form

FORM C: Withdrawal of a Child(ren)

FORM D: Completion of Program

79-1601. Private, denominational, or parochial schools, teachers, and other individuals; laws applicable; election not to meet accreditation or approval requirements.

(1) Except as provided in subsections (2) through (6) of this section, all private, denominational, and parochial schools in the State of Nebraska and all teachers employed or giving instruction in such schools shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of students. All private, denominational, and parochial schools shall have adequate equipment and supplies, shall be graded the same, and shall have courses of study for each grade conducted in such schools substantially the same as those given in the public schools which the students would attend in the absence of such private, denominational, or parochial schools.

(2) All private, denominational, or parochial schools shall either comply with the accreditation or approval requirements as prescribed pursuant to section 79-318 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of this section. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations governing procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of this section, not to meet state accreditation or approval requirements shall be based upon an assurance that such schools offer a program of instruction leading to the acquisition of basic skills in the language arts, mathematics, science, social studies, and health. The assurance required pursuant to this subsection shall be satisfied by a signed statement by the parent, legal guardian, or educational decisionmaker of a student that the education provided complies with subsections (2) through (6) of this section. Rules and regulations which govern procedures under this section are limited to procedures for receiving information from a parent, legal guardian, or educational decisionmaker of a student or a parent representative when such individual files the election not to meet accreditation or approval requirements under this section.

(3) The provisions of subsections (3) through (6) of this section shall apply to any private, denominational, or parochial school in the State of Nebraska which elects not to meet state accreditation or approval requirements. An election pursuant to such subsections shall be effective when a statement is received by the Commissioner of Education signed by a parent, legal guardian, or educational decisionmaker of each student attending such private, denominational, or parochial

school, stating that (a) either specifically (i) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education violate sincerely held religious beliefs of the parent, legal guardian, or educational decisionmaker or (ii) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education interfere with the decisions of the parent, legal guardian, or educational decisionmaker in directing the student's education, (b) an authorized representative of such parent, legal guardian, or educational decisionmaker will annually submit to the Commissioner of Education an assurance that the requirements of subdivisions (4)(a) through (c) of this section are and will continue to be satisfied, (c) the school offers the courses of instruction required by subsections (2), (3), and (4) of this section, and (d) the parent, legal guardian, or educational decisionmaker is satisfied that individuals monitoring instruction at such school are qualified to monitor instruction in the basic skills as required by subsections (2), (3), and (4) of this section.

(4) Each such private, denominational, or parochial school shall (a) meet minimum requirements relating to health, fire, and safety standards prescribed by state law and the rules and regulations of the State Fire Marshal, (b) report attendance pursuant to section 79-201, (c) maintain a sequential program of instruction designed to lead to basic skills in the language arts, mathematics, science, social studies, and health, and (d) comply with the immunization requirements in section 79-217 if the statement signed by the parent, legal guardian, or educational decisionmaker indicates a nonreligious reason pursuant to subdivision (3)(a)(ii) of this section for the student attending a private, denominational, or parochial school which elects not to meet state accreditation or approval requirements. The State Board of Education shall establish procedures for receiving information and reports required by subsections (3) through (6) of this section from authorized parent representatives who may act as agents for the parent, legal guardian, or educational decisionmaker of a student attending such schools.

(5) Individuals employed or utilized by schools which elect not to meet state accreditation or approval requirements shall not be required to meet the certification requirements prescribed in sections 79-801 to 79-815.

(6) Any school which elects not to meet state accreditation or approval requirements and does not meet the requirements of subsections (2) through (6) of this section shall not be deemed a school, and the parent, legal guardian, or educational decisionmaker of any students attending such school shall be subject to prosecution pursuant to section 79-201 or any statutes relating to habitual truancy.

(7) For purposes of this section, educational decisionmaker means a person designated or ordered by a court to make educational decisions on behalf of a

child.

Source: Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(h), p. 230; C.S.1922, § 6508f; C.S.1929, § 79-1906; R.S.1943, § 79-1913; Laws 1949, c. 256, § 506, p. 864; Laws 1984, LB 928, § 3; R.S.1943, (1994), § 79-1701; Laws 1996, LB 900, § 1004; Laws 1999, LB 268, § 1; Laws 1999, LB 813, § 55; Laws 2003, LB 685, § 25; Laws 2009, LB549, § 49; Laws 2024, LB1027, § 1.

Cross References

Admission to public college or university, see section 85-607.
Identification of students, home school duties, see section 43-2007.
Religious beliefs, conflict with required immunizations, see section 79-221.
Sales and use tax exemption, see section 77-2704.12.
Student transfer, access to student files or records, see section 79-2,105.

Annotations

This section does not set out a deadline for an exempt school to begin operations. State v. Thacker, 286 Neb. 16, 834 N.W.2d 597 (2013).

Requirement of minimal school standards did not infringe upon constitutional rights of parents of school children. Meyerkorth v. State, 173 Neb. 889, 115 N.W.2d 585 (1962).

79-318. State Board of Education; powers; duties.

The State Board of Education shall:

(1) Appoint and fix the compensation of the Commissioner of Education;

(2) Remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;

(3) Upon recommendation of the commissioner, appoint and fix the compensation of all new professional positions in the department, including any deputy commissioners;

(4) Organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper functions and to render maximum service to the board and to the state school system;

(5) Provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through the commissioner: (a) Provide supervisory and consultation services to the schools of the state; (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs; (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-703 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of section 79-1601. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of section 79-1601, not to meet state accreditation or approval requirements shall be as described in such section; (d) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable; (e) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary

educational data, and for evaluating educational progress; (f) cause to be published laws, rules, and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state; (g) approve teacher education programs conducted in Nebraska postsecondary educational institutions designed for the purpose of certificating teachers and administrators, except that such approval shall not require a statewide examination as an entrance requirement related to basic skills competency; (h) approve certificated-employee evaluation policies and procedures developed by school districts and educational service units; and (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature;

(6) Adopt and promulgate rules and regulations for the guidance, supervision, accreditation, and coordination of educational service units. Such rules and regulations for accreditation shall include, but not be limited to, (a) a requirement that programs and services offered to school districts by each educational service unit shall be evaluated on a regular basis, but not less than every seven years, to assure that educational service units remain responsive to school district needs and (b) guidelines for the use and management of funds generated from the property tax levy and from other sources of revenue as may be available to the educational service units, to assure that public funds are used to accomplish the purposes and goals assigned to the educational service units by section 79-1204. The State Board of Education shall establish procedures to encourage the coordination of activities among educational service units and to encourage effective and efficient educational service delivery on a statewide basis;

(7) Prepare and distribute reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;

(8) Provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;

(9) Make studies, investigations, and reports and assemble information as necessary for the formulation of policies, for making plans, for evaluating the state school program, and for making essential and adequate reports;

(10) Submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;

(11) Interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;

(12) With the advice of the Department of Motor Vehicles, adopt and promulgate rules and regulations containing reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of public, private, denominational, or parochial school students; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of public, private, denominational, or parochial school students, when such vehicles are owned, operated, or owned and operated by any public, private, denominational, or parochial school or privately owned or operated under contract with any such school in this state, except for vehicles owned by individuals operating a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements. Similar rules and regulations shall be adopted and promulgated for operators of such vehicles as provided in section 79-607;

(13) Accept, on behalf of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, devises of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of the center or the students receiving services from the center, or both, and irrigate or otherwise improve any such real estate when in the board's judgment it would be advisable to do so; and

(14) Upon acceptance of any devise, donation, or bequest as provided in this section, administer and carry out such devise, donation, or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and conditions of any such devise, donation, or bequest, the board may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and remit all money derived from any such sale or lease to the State Treasurer for credit to the State Department of Education Trust Fund.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

Source: Laws 1953, c. 320, § 8, p. 1056; Laws 1955, c. 306, § 1, p. 947; Laws 1959, c. 383, § 1, p. 1328; Laws 1967, c. 528, § 2, p. 1753; Laws 1969, c. 707, § 2, p. 2712; Laws 1969, c. 708, § 1, p. 2716; Laws 1971, LB 292, § 5; Laws 1974, LB 863, § 8; Laws 1977, LB 205, § 1; Laws 1979, LB 322, § 37; Laws 1981, LB 316, § 1; Laws 1981, LB 545, § 27; Laws 1984, LB 928, § 2; Laws 1984, LB 994, § 6; Laws 1986, LB 1177, § 36; Laws 1987, LB 688, § 11; Laws 1989, LB 15, § 1; Laws 1989, LB 285, § 141; Laws 1990, LB 980, § 34; Laws 1994, LB 858, § 3; R.S.1943, (1994), § 79-328; Laws 1996, LB 900, § 146; Laws 1999, LB 813, § 6; Laws 2009, LB549, § 18; Laws 2010, LB1071, § 5; Laws 2011, LB575, § 8; Laws 2012, LB782, § 148; Laws 2013, LB222, § 32; Laws 2015, LB525, § 9; Laws 2019, LB675, § 2; Laws 2022, LB1218, § 10.

Cross References

Gifts, devises, and bequests, loans to needy students, see section 79-2,106.
Private, denominational, or parochial schools, election not to meet approval or accreditation requirements, see section 79-1601 et seq.

Annotations

The state, having a high responsibility for the education of its citizens, has the power to impose reasonable regulations for the control and duration of basic education. Parents have a right to send their children to private schools but do not have the right to be completely unfettered by reasonable government regulations as to the quality of the education furnished and the maintenance of minimum standards. State ex rel. Douglas v. Faith Baptist Church of Louisville, 207 Neb. 802, 301 N.W.2d 571 (1981).

Adequate standards are provided by this section to authorize transfer of land from a nonaccredited to an accredited high school district. De Jonge v. School Dist. of Bloomington, 179 Neb. 539, 139 N.W.2d 296 (1966).

Matters to be considered in promulgating rules and regulations are specified. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

Standards were not effective until filed with Secretary of State. School Dist. No. 228 of Holt County v. State Board of Education, 164 Neb. 148, 82 N.W.2d 8 (1957).

This section was not applicable to supply standards in cases arising before its enactment. School Dist. No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

FISCAL IMPACT
STATEMENT

Agency:	Nebraska Department of Education
Prepared by:	Bryce Wilson
Date Prepared:	11-7-25
Phone:	(402) 471-4320
Title:	92
Chapter:	13
Name:	Regulations and Procedures for Exempting Schools for which Parents Elect Not to Meet Legal Requirements for School Approval and Accreditation
Statement Status:	Hearing Draft

Type of Fiscal Impact:

	State Agency	Political Subdivision	Regulated Public
No Fiscal Impact		X	X
Increase Costs	Minimal		
Decrease Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

State Agency: It will cost approximately $650 to hold the hearing and print copies for distribution upon approval of the revised rule. The Legislature already provides funds to the Nebraska Department of Education for this program.

Political Subdivision:

Regulated Public:

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Lincoln, NE 68509-4987
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PROPOSED AGENDA ITEM RATIONALE

DATE: December 16, 2025

TO: Dr. Brian L. Maher
Commissioner of Education

FROM: Amy Rhone, Administrator – The Office of Special Education

PROPOSED AGENDA ITEM: Proposed Revision of Rule 51 (92 NAC 51) Regulations and Standards for Special Education Programs.

AGENDA ITEM TYPE (contract/grant/rule/program/other): Rule

RATIONALE/BACKGROUND INFORMATION: The October 2025 Rules and regulations Committee meeting included an overview of Rule 51, which contains regulations and standards for special education programs. Rule 51 is authorized pursuant to Nebraska Revised Statues §§79-318 and 79-319 as well as regulations necessary to carry out the "Special Education Act".

In October of 2025, the Rules and Regulations Committee of the State Board of Education discussed policy issues and the need for additional revisions to 92 NAC 51 (Rule 51). The Nebraska Department of Education staff sought input from the Special Education Advisory Council (SEAC), Results Driven Accountability (RDA) Stakeholders, The Nebraska Commission for the Deaf and Hard of Hearing (NCDHH), and The Nebraska Association of the Deaf (NEAD) to identify policy issues and explore solutions.

The Department utilizes the Special Education Advisory Council (SEAC) as an advisory group to aid in the identification of policy issues, propose solutions, and provide feedback to potential revisions. SEAC is an advisory group that includes Administrators, Teachers, Agency Support Personnel, Providers, and Parents of Students with Disabilities. SEAC has provided substantial feedback to the revision process. Additionally, department staff engaged The Nebraska Commission for the Deaf and Hard of Hearing (NCDHH) and The Nebraska Association of the Deaf (NEAD) in the process of identifying policy issues, discussing potential solutions, and providing feedback regarding potential revisions.

Based on stakeholder discussions and direction from the Rules and Regulations committee, Department staff created the public input draft of Rule 51. The public input draft was posted on the department website from Friday, October 24, 2025, through Friday, November 7, 2025, to allow public input. No public input was received.

The proposed revisions aim to: (1) align the language with the IDEA in the allowable use of mediation as the mediation process offers an opportunity for parents and public agencies to resolve disputes about *any* matter under IDEA and (2) provide flexibility to Nebraska Public Schools that cannot immediately hire a fully qualified educational sign language interpreter.

This agenda item allows for a potential approval vote on revisions to Rule 51 at the January 2026 Board meeting. The public hearing draft and summary of the changes are attached.

PROPOSED BOARD MEETING (MONTH/YEAR): January 2026

ESTIMATED COST: $600

FOR CONTRACTS AND GRANTS:

- Indicate the Funding Source: Federal IDEA – Part B, 611 and 619 Funding
- New or Renewal: New
- If renewal, date of first approval:

FOR NEW CONTRACTS OR OTHER CONTRACTS REQUIRING PROCUREMENT:

FOR GRANT SUBAWARDS:

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Lincoln, NE 68509-4987
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From: Troy L. Hawk, Legal Counsel

Date: December 18, 2025

Re: Summary of Rulemaking Hearing on the Proposed Revisions of 92 *NAC* 51

On December 17, 2025, a hearing on the proposed revision of Title 92, *Nebraska Administrative Code*, Chapter 51 (Rule 51), *Regulations and Standards for Special Education Programs*. Legal Counsel Troy Hawk served as the hearing officer. A recording of the hearing is available at: https://www.education.ne.gov/legal/rule-hearings/.

Summary of Oral Testimony on the Proposed Revision of 92 NAC 51

Troy Hawk called the hearing to order, introduced himself, introduced the subject of the hearing, read into the record information about the legal notice of the hearing, outlined the procedures for the hearing and for receiving written testimony, and received testimony on revisions to Title 92 *Nebraska Administrative Code* Chapter 51.

Amy Rhone, Administrator for the Nebraska Department of Education Office of Special Education, presented a summary of the proposed changes to Rule 51:

- Rule 51 contains regulations and standards for special education programs. Rule 51 is authorized pursuant to Nebraska Revised Statues §§79-318 and 79-319 as well as regulations necessary to carry out the "Special Education Act".

- The last revisions to Title 92, Nebraska Administrative Code, Chapter 51, Regulations and Standards for Special Education Programs (Rule 51) approved by the State Board of Education became effective in May of 2022. In October of 2025, the Rules and Regulations Committee of the State Board of Education discussed policy issues and the need for additional revisions to 92 NAC 51 (Rule 51). The Nebraska Department of Education staff sought input from the Special Education Advisory Council (SEAC), Results Driven Accountability (RDA) Stakeholders, The Nebraska Commission for the Deaf and Hard of Hearing (NCDHH), and The Nebraska Association of the Deaf (NEAD) to identify policy issues and explore solutions.

- The Department utilizes the Special Education Advisory Council (SEAC) as an advisory group to aid in the identification of policy issues, propose solutions, and provide feedback to potential revisions. SEAC is an advisory group that includes Administrators,

Teachers, Agency Support Personnel, Providers, and Parents of Students with Disabilities. SEAC has provided substantial feedback to the revision process. Additionally, department staff engaged The Nebraska Commission for the Deaf and Hard of Hearing (NCDHH) and The Nebraska Association of the Deaf (NEAD) in the process of identifying policy issues, discussing potential solutions, and providing feedback regarding potential revisions.

- Based on stakeholder discussions and direction from the Rules and Regulations committee, Department staff created this public input draft of Rule 51. The public input draft was posted on the department website from Wednesday, Oct 22, 2025 through Tuesday, Octover 28, 2025, to allow public input. No public input was received.

- The proposed revisions aim to: (1) align the language with the IDEA in the allowable use of mediation as the mediation process offers an opportunity for parents and public agencies to resolve disputes about any matter under IDEA and (2) provide flexibility to Nebraska Public Schools that cannot immediately hire a fully qualified educational sign language interpreter.

- A summary of the substantive changes from the current Rule 51 contained in the draft rule revision include:

1. Revisions to the section of Rule 51 that will align regulation to 34 C.F.R. § 300.506(a). OSEP reviewed the State's IDEA Part B-Parent's Rights in Special Education, Procedural Safeguards Notice (State's Notice); Nebraska Administrative Code-Title 92, Chapter 51 (Rule 51); and the Nebraska Mediation Brochure.

    a. The State's Notice related to resolving disputes through a mediation process contains provisions that are consistent with the requirements in 34 C.F.R. § 300.506(a). However, the State's Rule 51; and the Nebraska Mediation Brochure related to resolving disputes through a mediation process allow parties to disputes involving matters that are only related to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child.

    b. The mediation process offers an opportunity for parents and public agencies to resolve disputes about any matter under IDEA Part B, including matters arising prior to the filing of a due process complaint. This includes matters regarding the identification, evaluation, or educational placement of a child with a disability, or the provision FAPE to a child with a disability, as well as any other matters arising under IDEA Part B that may not be the subject of a due process complaint.

2. The revisions to subsections 010.06D and 010.06E refine the process for hiring and monitoring educational sign language interpreters who have not yet met full qualification standards. Key implications include:

a. The proposed changes include the removal of the two-year time limit and specific competency requirement, instead focusing on completion of a professional development plan. They also offer a shift in oversight of the professional development planning process that is intended to create clearer separation of duties and adds an external layer of oversight for plan approval. Finally, the proposed changes will focus on not measuring progress solely by achieving a testing benchmark, the rule now requires that the interpreter successfully complete the professional development plan.

b. The changes provide districts with slightly more flexibility in employing interpreters who initially do not meet full qualifications, while ensuring accountability through a required, monitored professional development plan that is formally approved at the state program level. This approach prioritizes documented professional growth and structured oversight over a fixed time limit or single testing outcome.

c. Currently, all special education positions within the state and nation are the highest shortage areas for districts to fill. Specialty areas within special education, such as Educational Sign Language Interpreters have always been one of the hardest to attract, prepare, and ultimately retain in education. The revisions proposed to 92 NAC 51 (Rule 51) would assist districts in attracting individuals and ultimately prepare and retain quality as well as qualified educational sign language interpreters in Nebraska schools.

- No substantive changes to policy intent or program requirements were introduced with this revision.

Oral Testimony

There was no oral testimony

Written Testimony

There was no written testimony submitted.

Amy Rhone of the Nebraska Department of Education thanked everyone for the assistance in revising Rule 51.

Troy Hawk thanked everyone for their time and effort and closed the hearing on Rule 51.

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION

CHAPTER 51 - REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS

001 Declaration of Responsibility

Neb. Rev. Stat. §79-1127 declares, "The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs."

002 Statutory Authority

This Chapter is adopted pursuant to the statutory authority vested in the Nebraska Department of Education in Neb. Rev. Stat. §79-1160 which declares, "The State Department of Education shall adopt, promulgate and publish rules and regulations necessary to carry out the Special Education Act" and in Neb. Rev. Stat. §§79-318 and 79-319.

003 Definition of Terms

003.01 ***Adjusted average per pupil cost*** **(AAPC)** of the preceding year means the amount computed by dividing the total instructional expenditure, excluding special education expenditures, by the preceding year's average daily membership as reported in the annual finance report. The costs of sectarian instruction shall not be included in determining the adjusted average per pupil cost of the preceding year and the computation shall be subject to audit by appropriate state agencies. (See Section 011.)

003.02 ***Assistive technology device*** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

003.03 ***Assistive technology service*** means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with a disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with a disability, or if appropriate, that child's family; and training or technical assistance for professionals (including individuals providing education or rehabilitation services),

employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child with a disability.

003.04 ***At no cost*** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled children or their parents as a part of the regular education program.

003.05 ***Below age five*** means those children who have not reached their fifth birthday on or before July 31 of the current school year.

003.06 ***Categorical program*** means a special education program setting in which services are provided to children with the same disability.

003.07 ***Child find*** means that all children with disabilities residing in the State, including children with disabilities who are homeless children, or are wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services (See Section 006).

003.08 ***Child with a disability*** means a child who has been verified pursuant to Section 006 as a child with autism, a behavior disorder (herein referred to as emotional disturbance), deaf-blindness, a developmental delay, a hearing impairment including deafness, an intellectual disability, multiple impairment, an orthopedic impairment, an other health impairment, a specific learning disability, a speech-language impairment, a traumatic brain injury or a visual impairment including blindness, who because of this impairment needs special education and related services. If, under 92 NAC 51-003.56, it is determined, through an appropriate evaluation under Section 006, that a child has one of the disabilities identified above, but only needs a related service and not special education, the child is not a child with a disability under this Chapter. If the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

003.09 ***Consent*** means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; that the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; that the consent includes a description of the proposed activity and a list of records (if any) which will be released and to whom they will be released; and the parent understands that the granting of consent is voluntary and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related

services, the school district or approved cooperative is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

003.10 ***Controlled substance*** means a drug or other substance identified under schedules I, II, III, IV or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

003.11 ***Cooperative*** means two or more school districts or an Educational Service Unit (ESU) approved by the Nebraska Department of Education to jointly perform special education functions, including receipt of special education payments.

003.12 ***Core Academic Subjects*** has the meaning given the term in Section 602(4) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.13 ***Day*** means calendar day unless otherwise indicated as business day or school day;

003.13A ***Business day*** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day) as in 92 NAC 51-015.02C2.

003.13B ***School day*** means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

003.14 ***Destruction*** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

003.15 ***Early childhood special education (ECSE) programs*** means special education programs and related services designed to serve children below age five with verified disabilities.

003.16 ***Early Intervening Services*** means the development and implementation of coordinated, early intervening services, which may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade 3) who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

003.17 ***Education*** records means those records that are directly related to a child which are maintained by an educational agency or institution or by a party acting for the agency or institution. This term parallels the definition contained in the regulations implementing the Family Educational Rights and Privacy Act (FERPA).

003.18 Educational sign language interpreter means a person who provides interpreter services for individuals with deafness or hearing impairments for special education evaluations or services pursuant to IEPs; and who is qualified to facilitate communication between people who do not share a common language or mode of communication.

003.19 ***Equipment*** means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment, and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

003.20 ***Equitable*** services plan means a written statement that describes the special education and related services the school district or approved cooperative will provide to a parentally-placed non-resident child with a disability enrolled in a non-public school in a district other than the district of residence who has been designated to receive services, including the location of the services and any transportation necessary consistent with Section 015 of this Chapter, and is developed and implemented in accordance with Section 015 of this Chapter.

003.21 ***Evaluation*** means procedures used in accordance with 92 NAC 51-006 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

003.22 ***Excess*** costs means the difference between: (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of children (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the school district of each child for the preceding year.

003.23 ***Extended school year services*** means special education and related services that: are provided to a child with a disability, beyond the normal school year of the school district or approved cooperative, in accordance with the child's IEP, at no cost to the parents of the child, and meet the requirements of 92 NAC 51.

003.24 ***Free appropriate public education or FAPE*** means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007.

003.25 ***Full time equivalency (FTE)*** means the amount of time an individual staff member spends in his or her position assignment as it relates to the total time in the work week defined for that position by each school district.

003.26 ***Functional behavioral assessment*** means the process of gathering information that may be used to maximize the effectiveness and efficiency of behavior support (direct observation must be included). It involves a description of the problem behavior, the identification of antecedents which occasion the behavior and consequences which maintain it, the function the behavior serves (e.g., attention, communication, task avoidance), and the selection of alternative behaviors which will provide the same function.

003.27 ***Homeless children*** has the meaning given the term homeless children and youth in Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C.11434a).

003.28 ***Illegal drug*** means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provisions of federal law.

003.29 ***Include*** means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

003.30 ***Independent educational evaluation*** means an evaluation conducted by a qualified examiner who is not employed by the school district or approved cooperative responsible for the education of the child in question.

003.31 ***Individualized education program (IEP)*** means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education.

003.32 ***Individualized education program team or IEP team*** means a group of individuals described in Section 007 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

003.33 ***Individualized Family Service Plan (IFSP)*** means a written plan for providing early intervention services to a child with a disability age birth through the school year in which the child reaches age 3 and the child's family that is developed and implemented in accordance with 92 NAC 52.

003.34 ***Level I Special Education Services*** means those services provided to children who require an aggregate of not more than three (3) hours of such services per week. Level I special education services may be provided for or contracted for

and shall include all administrative, diagnostic, consultative, vocational adjustment counselor services and support services. Administration, diagnostic services, and special education staff consultation with other staff shall not be included in the computation of hours of services provided to a child each week.

003.35 ***Level I and Level II Combination Special Education Services*** means those special education programs which serve both Level I and Level II students in a combined program.

003.36 ***Level II Special Education Services*** means those special education and related services which are provided for a period of time exceeding an aggregate of three hours per week.

003.37 ***Level III Special Education Contractual Services*** means those special education and related services provided in an educational setting not operated by the school district or approved cooperative whose rates are approved by the Nebraska Department of Education. This shall mean special education and related services provided for a period of time exceeding an aggregate of three hours per week.

003.38 ***Life support equipment*** means equipment used to maintain or sustain life functions.

003.39 ***Limited English Proficient*** has the meaning given the term in Section 602(18) in the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.40 ***Multicategorical program*** means a special education program setting which provides services to any combination of categories of children with disabilities.

003.41 ***Multidisciplinary evaluation team (MDT)*** means a group of qualified professionals and the parent whose responsibility is to evaluate the abilities and needs of a child referred for evaluation and to determine whether or not the child meets the definition of a child with a disability.

003.42 ***Native language***, (when used with respect to an individual of limited English proficiency), means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

003.43 ***Notice*** means written information provided to the parent of a child with a disability a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.

003.44 ***Parent*** means a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 92 NAC 51-009.10B. The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. However, if a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this subsection.

003.45 ***Personal equipment and supplies*** means items necessary for daily life activities occurring outside the requirement of the IEP which are generally expected to be the responsibility of parents.

003.46 ***Personally identifiable*** means information that contains the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or NDE student ID; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

003.47 ***Public agency*** includes the Nebraska Department of Education, school districts and approved cooperatives and any other political subdivisions of the state that are responsible for providing education to children with disabilities.

003.48 ***Referral*** means the submission of a request by a parent, school personnel or approved agency for an individual evaluation of a child suspected of having a disability.

003.49 ***Related services*** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or

evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. Related services do not include a medical device that is surgically implanted (including cochlear implants), the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. This definition does not limit the right of a child with a surgically planted device (e.g., cochlear implant) to receive related services as listed in this definition that are determined by the IEP team to be necessary for the child to receive FAPE or limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

003.50 ***Residential care*** means food and lodging and any other related expenses which are not part of the education program, but such care shall not include expenditures for medical or dental services. (See 92 NAC 53.)

003.51 ***School age programs*** means special education programs and related services designed to serve children with verified disabilities from age five through the school year in which the children reach age twenty-one. Children who have reached their fifth birthday prior to July 31 shall be considered school age.

003.52 ***School district*** means a public school district or a cooperative approved as a Nebraska Department of Education special education service provider.

003.53 ***Serious bodily injury*** means bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

003.54 ***Service agency*** means the school district or approved cooperative, educational service unit, local or regional office of mental retardation, or some combination thereof, or such other agency approved by the Department of Education as may provide a special education program including an institution not wholly owned or controlled by the state or a political subdivision.

003.55 ***Service provider*** means an individual or service agency, excluding a school district or approved cooperative, provisionally approved by the Nebraska Department of Education.

003.56 ***Special education*** means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings and instruction in physical education. The term includes travel training, vocational education, speech-language pathology, occupational therapy and

physical therapy if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

003.56A ***Physical Education*** means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education and motor development.

003.56B ***Vocational Education*** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

003.57 ***Specially designed instruction*** means adapting as appropriate to the needs of an eligible child under this Chapter the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public school district or approved cooperative that apply to all children.

003.58 ***Student assistance team (SAT)*** means a group of persons utilizing problem solving and intervention strategies to assist the teacher(s) in the provision of general education.

003.59 ***Supplementary aids and services*** means, aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and non-academic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 008 of this Chapter.

003.60 ***Support services*** means preventative services for students not identified or verified as having a disability as per Section 006 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum and to avoid the need for potentially expensive special education placement and services.

003.61 ***Surrogate parent*** means an individual appointed by the school district or approved cooperative to act in place of a parent in safeguarding a child's rights in the special education decision making process.

003.62 ***Teacher meeting IDEA 2004 criteria***, for any special education teacher, has the meaning given in Section 602(10) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.63 ***Transition services*** means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based upon the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and a functional vocational evaluation. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.

003.64 ***Travel training*** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in the school, in the home, at work, and in the community).

003.65 ***Universal design*** has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

003.66 ***Ward of any court*** means any minor child who, by virtue of a court order entered by a court of competent jurisdiction, has been adjudicated to be a ward of the court.

003.67 ***Ward of the State*** means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in 92 NAC 51-003.44.

003.68 ***Weapon*** means a dangerous weapon as defined in 18 U.S.C. 930(g)(2) to mean a device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches in length.

004 Responsibility for Special Education Programs

004.01 All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which

the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs. School districts and approved cooperatives responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children in detention facilities, correctional facilities, jails, and prisons.

004.02 The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on an individual basis by the multidisciplinary evaluation team.

004.03 Exceptions to the Requirement to Provide a Free Appropriate Public Education

004.03A Children with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.

004.03A1 The exception in 92 NAC 51-004.03A does not apply to children who have graduated but have not been awarded a regular high school diploma.

004.03A2 Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.05.

004.03A3 As used in this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards such as a certificate or a general educational developmental credential (GED).

004.04 At the request of a parent or guardian, a school district shall issue a certificate of attendance to a student who receives special education services under 92 NAC 51, who has reached seventeen years of age, and who has not completed his or her individualized education program. A school district shall allow a student who receives a certificate of attendance under this section to participate in the high school graduation ceremony of such high school with students receiving high school diplomas. A student may receive only one certificate of attendance and may participate in only one graduation ceremony based on such certificate. The receipt of a certificate of attendance pursuant to this section shall not affect a school district's obligation to continue to provide special education services to a student receiving such certificate.

004.04A Section 004.04 does not preclude a student from receiving a high school diploma by meeting the school district's graduation requirements established pursuant to Neb. Rev. Stat. §79-729 or in his or her individualized education program or receiving a diploma of high school equivalency under Neb. Rev. Stat. §79-730 upon completing the requirements of such section. The school district may allow a student who has previously participated in a graduation ceremony based on a certificate of attendance to participate in an additional graduation ceremony when such student receives a high school diploma.

004.05 Participation in Assessments

004.05A School districts shall include all public school children with disabilities in all general state and district-wide assessment programs, including assessments described under section 612(a)(16)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

004.05B In the case of a district-wide assessment, the school district shall develop guidelines for the provision of appropriate accommodations.

004.05C In the case of a district-wide assessment, the school district shall develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under 92 NAC 51-004.05A with accommodations as indicated in their respective individualized education programs. The guidelines shall provide for accommodations and alternate assessments that:

004.05C1 Are aligned with the Nebraska Department of Education's challenging academic content standards and challenging student academic achievement standards; and

004.05C2 If the Nebraska Department of Education has adopted alternate academic achievement standards permitted under Section 612(a)(16)(C)(ii)(II) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), measure the achievement of children with disabilities against those standards.

004.05D School districts shall make available to the public, and report to the public with the same frequency and in the same detail as they report on the assessment of nondisabled children, the following:

004.05D1 The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in these assessments.

004.05D2 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C1.

004.05D3 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C2.

004.05D4 The performance results of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual child), compared with the achievement of all children, including children with disabilities, on those assessments.

004.05E In the case of a district-wide assessment, the school district or approved cooperative shall, to the extent feasible, use universal design principles in developing and administering any assessments under this Section.

004.06 Reporting of Information Regarding Children with Disabilities

004.06A Individual child information shall be reported electronically via the NDE Portal. Each school district or approved cooperative shall maintain and report the following information for children with verified disabilities receiving services according to an individualized education program.

004.06A1 Name (or identifier approved by NDE) and birthdate;

004.06A2 County, district of legal residence and building of attendance;

004.06A3 Program and instructional setting attended;

004.06A4 Type(s) of disability;

004.06A5 Race/ethnicity, gender, and limited English proficiency;

004.06A6 Type(s) of service received;

004.06A7 Indication of percent of time spent receiving special education service (for inclusive and segregated settings) and in regular education;

004.06A8 Date and reason for exiting special education;

004.06A9 State Ward Status and indication of appointment of surrogate if required;

004.06A10 Initial verification date and disability for children verified pursuant to 92 NAC 51-006.04;

004.06A11 Whether the child received a regular diploma based on the same standards as general education peers or based on the goals met in the child's IEP.

004.06B This data shall be updated at least annually to reflect change(s) in the above information.

004.06C Public special purpose school systems accredited under 92 NAC 10 and school districts or approved cooperatives shall prepare an accurate and unduplicated child count as of October 1 of each year. The October 1 child count shall be approved and submitted electronically by the portal administrator or designee via the NDE portal on or before October 31 of each year.

004.06D Public special purpose school systems accredited under 92 NAC 10 and school districts or approved cooperatives shall prepare an accurate and unduplicated year-end child count as of June 30 of each year. The June 30 year-end child count shall be approved and submitted electronically by the portal administrator or designee via the NDE portal on or before June 30 of each year.

004.06E School districts and approved cooperatives shall report their incidences, duration, and count of removals, suspensions, and expulsions of children receiving special education services by June 30 of each year. The report must be disaggregated by race/ethnicity, gender, LEP status and disability category.

004.07 A school district or approved cooperative shall submit a single district plan, participate in a plan submitted by a cooperative approved by the Department of Education, or any combination thereof. The State Board of Education shall approve or disapprove cooperatives for direct receipt of payment based on the following criteria:

004.07A The cooperative must be administered by a school district or an Educational Service Unit;

004.07B The participating school districts have certified that the cooperative is authorized to receive special education payments due the districts;

004.07C The cooperative provides evidence of agreements and procedures which provide for long term operation;

004.07D The cooperative proposes to operate programs which can be expected to increase program and financial efficiency and effectiveness; and

004.07E The cooperative provides evidence that the proportionate financial share as determined by the provisions of Sections 011 and 012 of each participating school district can be determined and documented.

004.08 School District or Approved Cooperative Special Education Policies and Procedures

004.08A The school district or approved cooperative shall develop, adopt and have on file with the Nebraska Department of Education current policies, procedures and forms for special education programs for all resident public and nonpublic school children with disabilities, in accordance with all applicable state and federal requirements. Policies and procedures shall govern identification, evaluation and verification, individualized education program, placement (least restrictive environment), confidentiality, procedural safeguards, comprehensive system of personnel development, transportation, and surrogate parents within the school district or approved cooperative. Additionally, policies and procedures shall govern free appropriate public education, child find, transition from Part C of the IDEA to preschool programs, children in nonpublic schools, personnel standards, performance goals and indicators, participation in assessments, reporting related to assessment results, and suspension and expulsion.

004.09 Notice and Opportunity for Hearing Before Withholding Funds

004.09A A school district or an approved cooperative shall be notified by certified mail to the head administrator whenever the Office of Special Education intends to recommend to the State Board of Education that funds be withheld from the school district or approved cooperative.

004.09B Within 21 calendar days of the school district's or approved cooperative's receipt of the notice of the Office of Special Education's intention to recommend withholding funds to the State Board of Education, the school district or approved cooperative may request in writing a review by the Commissioner or designee. Following the review, the Commissioner or designee shall:

004.09B1 Notify the school district or approved cooperative by certified mail that, based upon the review, (s)he will recommend to the State Board of Education that funds be withheld from the school district or approved cooperative, or

004.09B2 Notify the school district or approved cooperative that funds will not be withheld.

004.09C Within 30 calendar days of receipt of the notice of the Commissioner's intention to withhold funds, the school district or approved cooperative may request in writing a hearing before the State Board of Education. The hearing

shall be conducted in accordance with the hearing procedures of 92 NAC 61, including provisions of that Chapter relating to evidence.

004.10 Children with Disabilities who are Wards of the State or Court

004.10A Responsibility for the provision and payment of a free appropriate public education for wards of the state or court is determined pursuant to Neb. Rev. Stat. §79-215.

004.11 Special Requirements

004.11A Each school district or approved cooperative shall take steps to ensure that its children with verified disabilities have available to them the variety of educational programs and services available to children without disabilities in the areas served by the school district including art, music, industrial arts, family consumer science education, and vocational education.

004.11B Each school district or approved cooperative shall comply with any federal health or safety requirements that apply to the facilities that the school district or approved cooperative uses to provide a free appropriate public education for children with verified disabilities.

004.11C Each school district or approved cooperative shall administer or supervise the administration of all educational programs for children with verified disabilities.

004.11D Prohibition on mandatory medication:

004.11D1 The school districts, approved cooperatives and special education and related services providers are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for the child as a condition of attending school, receiving an evaluation under Section 006 of this Chapter, or receiving services under 92 NAC 51.

004.11D2 Nothing in 92 NAC 51-004.11D1 shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a child's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

004.12 Innovative Educational Projects

004.12A School districts and approved cooperatives wishing to conduct innovative educational projects for the purpose of improving instruction or increasing

educational opportunities for children with disabilities that would result in deviating from the standards in this Chapter, shall submit a detailed written plan to the Commissioner of Education.

004.12A1 The length of the project must be specified in the plan, not to exceed three years, and must provide for an annual review of the progress of the program.

004.12A2 If the submitted project requires a waiver of any of the provisions of this Chapter which are not required by State statute and Federal law or regulation, the Commissioner shall submit the plan to the State Board of Education with recommendations.

004.12A3 The State Board of Education may approve the requested plan if the plan demonstrates that it promotes quality learning, equity, accountability, and that the Commissioner of Education will be informed annually of the progress and the project results.

004.12A4 The State Board of Education shall reject the plan if, in its opinion, the plan would not promote quality learning, equity, accountability or if it does not provide that the Commissioner of Education will be informed annually of the progress of the plan. The State Board of Education shall also reject the plan if, in the State Board of Education's opinion, the plan results in a deviation of standards contained in this Chapter which are specifically required by statute or federal law or regulation.

004.13 All school districts or approved cooperatives shall participate in an ongoing review of their special education programs for purposes of improving outcomes utilizing the Improving Learning for Children with Disabilities self assessment process (ILCD).

004.14 All special education programs shall comply with the requirements of state and federal law and regulation concerning the education of children with disabilities and shall be monitored at least once every five years for compliance with state and federal special education law and regulation.

004.14A Failure to comply with the provisions of state and federal statute and administrative rules concerning education of children with disabilities shall result in notification of school districts or approved cooperatives of the specific program deficiencies by the Office of Special Education.

004.14B School districts or approved cooperatives shall be afforded 45 days to respond to the initial notification with a report of the resolution of the deficiencies or a plan for resolution.

004.14C School districts or approved cooperatives failing to respond as set forth in 92 NAC 51-004.14B shall be afforded an additional 30 days following contact from the Administrator of the Office of Special Education or the designee of the Administrator to submit a plan for resolution of the deficiencies.

004.14D Deficiencies must be corrected as soon as possible, and in no case later than one year after the school district or approved cooperative has been notified of the noncompliance. Deficiencies not corrected according to the timelines set forth in 92 NAC 51-004.14 shall be subject to the procedures outlined in 92 NAC 51-004.09.

004.14E Any school district or approved cooperative not meeting the requirements of this Chapter shall be in violation of the law. No state or federal funds shall be paid to any school district or approved cooperative as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of the State of Nebraska to be paid to such district or approved cooperative.

004.14F The Nebraska Department of Education will monitor school districts and approved cooperatives on the implementation of IDEA as amended in 2004 as required by 34 CFR 300.600 including the enforcement provision contained in 34 CFR 300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v) and (c)(2) and annually report on the districts' and cooperatives' performance.

004.15 Access to Instructional Materials

004.15A A school district or approved cooperative that chooses to coordinate with the National Instructional Materials Access Center (NIMAC) when purchasing print instructional materials shall enter into a written contract with the publisher of the print instructional materials to:

004.15A1 Require the publisher to prepare and, on or before the delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard (NIMAS); or

004.15A2 Purchase instructional materials from a publisher that are produced in or may be rendered in specialized formats.

004.15B Nothing in this section shall be construed to require a school district or approved cooperative to coordinate with the National Instructional Materials Access Center. If a school district or approved cooperative chooses not to coordinate with the National Instructional Materials Access Center, the school district or approved cooperative shall provide an assurance to the Nebraska Department of Education that the school district or approved cooperative will provide

instructional materials to children with blindness or other children with print disabilities at the same time as other children.

005 Early Childhood Services for Children with Disabilities Birth to Age Five

005.01 Each school district or approved cooperative shall demonstrate participation in a plan of services for children with disabilities who are less than five years of age. Such plans shall be prepared by each planning region and be updated annually and shall address:

005.01A Gaps and barriers in service delivery;

005.01B Child Find;

005.01C Training and technical assistance;

005.01D Parent involvement; and

005.01E Resources.

005.02 Annual Meetings

005.02A The annual meeting must be conducted prior to July 1 of each year.

005.02B The date and place of the annual meeting shall be disseminated within the region so that all school districts, approved cooperatives, service providers, parents, and nonpublic agencies serving children below age five have access to the information.

005.02C A written report of the annual meeting shall be prepared, which includes a list of participants and identified gaps and barriers. The written report shall be submitted to the Nebraska Department of Education on a date specified by the Department.

005.03 Transition of Children from the early intervention programs to preschool programs

005.03A The school district or approved cooperative shall have in effect policies and procedures to ensure that:

005.03A1 Children participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, shall experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the IDEA;

005.03A2 By the third birthday of a child described in 92 NAC 51-005.03A1, an IEP or an IFSP, has been developed and is being implemented for the child; and

005.03A3 The school district or approved cooperative will participate in transition planning conferences.

006 Identification of Children with Disabilities, Multidisciplinary Teams and Reporting of Diagnostic Data

006.01 Child Find

006.01A All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

006.01A1 The child find requirements apply to highly mobile children including migrant children.

006.01A2 The child find requirements also apply to a child who is suspected of being a child with a disability under 92 NAC 51-003.08 and in need of special education, even though the child is advancing from grade to grade.

006.01B Student Assistance Team (SAT) or Comparable Problem Solving Team

006.01B1 For a school age student, a general education student assistance team or a comparable problem solving team shall be used prior to referral for multidisciplinary team evaluation.

006.01B2 The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.

006.01B3 If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 92 NAC 51-006.01B and a listing of the members of the SAT or comparable problem solving team.

006.02 General Evaluation Requirements

006.02A The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

006.02B Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.

006.02B1 The resident school district or approved cooperative shall conduct a full and individual initial evaluation for each child being considered for special education and related services before the initial provision of special education and related services to a child with a disability. The initial evaluation shall determine whether a child is a child with a disability, and the educational needs of the child.

006.02B1a In implementing the requirements of 92 NAC 51-006.02B the school district or approved cooperative shall ensure that:

006.02B1a(1) The evaluation is conducted in accordance with the procedures described in Section 006 of this Chapter.

006.02B1a(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of Section 007 of this Chapter.

006.02C Verification criteria and procedures:

006.02C1 School districts and approved cooperatives must ensure assessments and other evaluation materials used to assess a child under this Chapter;

006.02C1a Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

006.02C1b Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer;

006.02C2 Are used for purposes for which the assessments or measures are valid and reliable.

006.02C3 School districts and approved cooperatives must ensure assessments of children with disabilities who transfer from one school or approved cooperative to another school or approved cooperative in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

006.02C4 School districts and approved cooperatives must ensure materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

006.02C5 School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

006.02C5a Whether the child is a child with a disability under 92 NAC 51-003.08; and

006.02C5b The content of the child's IEP.

006.02C6 School districts and approved cooperatives must ensure any standardized tests that are given to a child:

006.02C6a Have been validated for the specific purpose for which they are used; and

006.02C6b Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

006.02C6b(i) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of the test administration) must be included in the evaluation report.

006.02C7 School districts and approved cooperatives must ensure tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

006.02C8 School districts and approved cooperatives must ensure tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

006.02C9 School districts and approved cooperatives must ensure no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

006.02C10 School districts and approved cooperatives must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

006.02C11 School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

006.02C12 The school district or approved cooperative must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

006.02C13 The school district or approved cooperative must use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

006.02C14 In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:

006.02C14a Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

006.02C14b Ensure that information obtained from all of these sources is documented and carefully considered.

006.03 Multidisciplinary Evaluation Team (MDT) Requirements

006.03A The multidisciplinary evaluation team (including the child's parents) shall be responsible for the analysis, assessment, and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in Section 006 of this Chapter and the definitions found in 92 NAC 51-006.04, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IEP.

006.03B For children attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.

006.03C In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), lack of instruction in math, or limited English proficiency.

006.03D If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Section 007 of this Chapter.

006.03E Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)

006.03E1 The team shall prepare a written report of the results of the evaluation.

006.03E2 The report shall include a statement of:

006.03E2a Whether the child qualifies as a child with a disability based on the criteria and definition contained in 92 NAC 51-006.04;

006.03E2b The child's educational needs;

006.03E2c The basis for making the determination; and

006.03E2d A listing of the team members.

006.03E3 Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03E4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.

006.03F Multidisciplinary Evaluation Team Written Report for a Child with a Suspected Specific Learning Disability

006.03F1 The MDT shall prepare a written report of the results of the evaluation.

006.03F2 The report shall include a statement of:

006.03F2a Whether the child has a specific learning disability based on the criteria and definition contained in 92 NAC 51-006.04K.

006.03F2b The child's educational needs;

006.03F2c The basis for making the determination including an assurance that the determination was made in accordance with 92 NAC 51-006.02C14;

006.03F2d The relevant behavior if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

006.03F2e The educationally relevant medical findings, if any;

006.03F2f Whether the child does not achieve adequately for the child's age or to meet state-approved grade level standards consistent with 92 NAC 51-006.04K3a and the child does not make sufficient progress to meet age or state approved grade level standards consistent with 92 NAC 51-006.04K3b; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state approved grade level standards or intellectual development consistent with 92 NAC 51-006.04K3b(1);

006.03F2g The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

006.03F2h If the child has participated in a process that assesses the child's response to scientific, research-based intervention, then the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about:

006.03F2h(1) The school district's or approved cooperative's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

006.03F2h(2) Strategies for increasing the child's rate of learning; and

006.03F2h(3) The parent's right to request an evaluation.

006.03F2i A listing of the team members.

006.03F3 Each team member shall certify in writing whether the report reflects his or her conclusion. If the report does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03F4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.

006.03G For a school age child who after initial MDT evaluation does not qualify for special education services or for a child with a verified disability who upon reevaluation no longer qualifies for special education services, a problem solving team shall document a plan to assist the teacher(s) in the provision of regular education.

006.04 Eligibility for Special Education

006.04A School districts or approved cooperatives shall provide special education services only to children with verified disabilities.

006.04B Autism

006.04B1 To qualify for special education services in the category of Autism, the child must have a developmental disability which:

006.04B1a Significantly affects verbal and nonverbal communication and social interaction;

006.04B1b Is generally evident before age three; and

006.04B1c That adversely affects the child's educational performance.

006.04B1d Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, and unusual responses to sensory experiences.

006.04B2 Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in 92 NAC 51-006.04E.

006.04B3 A child who manifests the characteristics of autism after age 3 could be verified as having autism if the other criteria in 92 NAC 51-006.04B1 are met.

006.04C Deaf-Blindness

006.04C1 To qualify for special education services in the category of Deaf-Blindness, the child must have concomitant hearing and visual impairments, the combination of which causes:

006.04C1a Severe communication needs; and

006.04C1b Other developmental and educational needs.

006.04C1c The severity of these needs is such that they cannot be accommodated in special education programs solely for children with deafness or blindness.

006.04D Developmental Delay

006.04D1 To qualify for special education services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services:

006.04D1a Cognitive development,

006.04D1b Physical development,

006.04D1c Communication development,

006.04D1d Social or emotional development,

006.04D1e Adaptive behavior or skills development, or

006.04D1f A diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.

006.04D2 Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age eight.

006.04E Emotional Disturbance

006.04E1 To qualify for special education services in the category of emotional disturbance, the child must have a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

006.04E1a An inability to learn that cannot be explained by intellectual, sensory, or health factors;

006.04E1b An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

006.04E1c Inappropriate types of behavior or feelings under normal circumstances;

006.04E1d A general pervasive mood of unhappiness or depression; or

006.04E1e A tendency to develop physical symptoms or fears associated with personal or school problems.

006.04E2 The term includes schizophrenia. The term does not apply to children with social maladjustments, unless it is determined that they have an emotional disturbance.

006.04F Hearing Impairment

006.04F1 To qualify for special education services in the category of Hearing Impairment, a child must have an impairment in hearing which:

006.04F1a Is so severe that the child is impaired in processing linguistic information through hearing with or without amplification, or

006.04F1b Is permanent or fluctuating, and

006.04F1c Adversely affects the child's educational performance.

006.04F2 This term combines the state definition of "deaf" contained in Neb. Rev. Stat. §79-1118.01(4), the state definition of "hard of hearing" in Neb. Rev. Stat. §79-1118.01(7), the federal definition of "deafness" in 34 CFR 300.8(c)(3), and the federal definition of "hearing impairment" in 34 CFR 300.8(c)(5).

006.04G Intellectual Disability

006.04G1 To qualify for special education services in the category of Intellectual Disability, the child must demonstrate:

006.04G1a Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

006.04H Multiple Impairments

006.04H1 To qualify for special education services in the category of Multiple Impairments, the child must have concomitant impairments (such as intellectual disability-visual impairment, intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

006.04H2 This classification does not include children with deaf-blindness.

006.04I Orthopedic Impairment

006.04I1 To qualify for services in the category of Orthopedic Impairment, the child must have a severe orthopedic impairment that adversely affects the child's educational performance.

006.04I2 The category includes children with impairments caused by:

006.04I2a Congenital anomaly,

006.04I2b Impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and

006.04I2c Impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).

006.04J Other Health Impairment

006.04J1 To qualify for special education services in the category of Other Health Impairment, the child must have:

006.04J1a Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems which adversely affects the child's educational performance such as:

006.04J1a(1) Asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome.

006.04K Specific Learning Disability

006.04K1 To qualify for special education services in the category of specific learning disability the child must have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The category includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The category does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

006.04K2 The MDT of a child suspected of having a specific learning disability shall include at least:

006.04K2a The child's parents;

006.04K2b For a school age child, the child's regular teacher(s) or if a child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;

006.04K2c For a child below age 5, a teacher qualified to teach a child below age 5;

006.04K2d Special educator with knowledge in the area of specific learning disabilities;

006.04K2e At least one person qualified to conduct initial individual diagnostic examinations of children, such as a school psychologist, speech language pathologist, or remedial reading teacher; and

006.04K2f A school district administrator, or a designated representative.

006.04K3 The MDT may determine that a child has a specific learning disability if:

006.04K3a The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.

006.04K3b The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 92 NAC 51-006.04K3a when using a process based on the child's response to scientific, research-based intervention; or

006.04K3b(1) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.

006.04K4 The team determines that its findings under 92 NAC 51-006.04K3a and 006.04K3b are not primarily the result of:

006.04K4a A visual, hearing, or motor disability;

006.04K4b Intellectual disability;

006.04K4c Emotional disturbance;

006.04K4d Cultural factors,

006.04K4e Environmental or economic disadvantage; or

006.04K4f Limited English proficiency.

006.04K5 To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 92 NAC 51-006.02:

006.04K5a Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

006.04K5b Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

006.04K6 The school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the timeframes described in 92 NAC 51-009.04A1, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51-006.04K2.

006.04K6a If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in 92 NAC 51-006.04K5a and b; and

006.04K6b Whenever a child is referred for an evaluation.

006.04K7 The school district or approved cooperative must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

006.04K8 The MDT, in determining whether a child has a specific learning disability, must decide to:

006.04K8a Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

006.04K8b Have at least one member of the MDT described in 92 NAC 51-006.04K2 conduct an observation of the child's academic performance in the regular classroom after the child has been referred for

an evaluation and parental consent, consistent with 92 NAC 51-009.08 is obtained.

006.04K8c In the case of a child of less than school age or out of school, an MDT member must observe the child in an environment appropriate for a child of that age.

006.04L Speech-Language Impairment

006.04L1 To qualify for special education services in the category of Speech-Language Impairment, the child must have:

006.04L1a A communication disorder such as:

006.04L1a(1) Stuttering;

006.04L1a(2) Impaired articulation;

006.04L1a(3) Language impairment; or

006.04L1a(4) A voice impairment.

006.04L2 This disorder must adversely affect the child's educational performance.

006.04M Traumatic Brain Injury

006.04M1 To qualify for special education services in the category of Traumatic Brain Injury, the child must have:

006.04M1a An acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects the child's educational performance.

006.04M1b The category includes open or closed head injuries resulting in impairments in one or more areas such as:

006.04M1b(1) Cognition;

006.04M1b(2) Language;

006.04M1b(3) Memory;

006.04M1b(4) Attention;

006.04M1b(5) Reasoning;

006.04M1b(6) Abstract thinking;

006.04M1b(7) Judgment;

006.04M1b(8) Problem solving;

006.04M1b(9) Sensory, perceptual and motor abilities;

006.04M1b(10) Psychosocial behavior;

006.04M1b(11) Physical functions;

006.04M1b(12) Information processing; and

006.04M1b(13) Speech.

006.04M2 The category does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

006.04N Visual Impairment including Blindness

006.04N1 To qualify for special education services in the category of Visual Impairment, including blindness, the child must have;

006.04N1a An impairment in vision that, even with correction, adversely affects the child's educational performance.

006.04N2 Reevaluations

006.05 This category includes children who have partial sight or blindness.

006.05A A school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter:

006.05A1 If the school district or approved cooperative determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant, a reevaluation; or

006.05A2 If the child's parents or teacher requests a reevaluation.

006.05B A reevaluation conducted under subsection 006.05 of this Chapter:

006.05B1 May occur not more than once a year, unless the parent and the school district or approved cooperative agree otherwise; and

006.05B2 Must occur at least once every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary.

006.06 Review of Existing Evaluation Data

006.06A As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals as appropriate, shall:

006.06A1 Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or State assessments and classroom-based observations, and observations by teachers and related services providers; and

006.06A2 On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

006.06A2a Whether the child is a child with a disability, as described in 92 NAC 51-003.08, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

006.06A2b The present levels of academic achievement and related developmental needs of the child;

006.06A2c Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

006.06A2d Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

006.06B The school district or approved cooperative shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP team under 92 NAC 51-006.06A2.

006.06C The IEP team and other qualified professionals may conduct its review without a meeting.

006.06D If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs the school district or approved cooperative:

006.06D1 Shall notify the child's parents of:

006.06D1a That determination and the reasons for the determination; and

006.06D1b The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

006.06D2 The school district or approved cooperative shall not be required to conduct such an assessment unless requested to by the child's parents.

006.06E A school district or approved cooperative shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

006.06E1 The evaluation described in 92 NAC 51-006.06E is not required before the termination of a student's eligibility under this Chapter due to graduation from secondary school with a regular high school diploma, or to exceeding the age eligibility for a free appropriate public education under Neb. Rev. Stat. §79-1126. For a child whose eligibility terminates under these circumstances, a school district or approved cooperative shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

006.07 Independent Educational Evaluation

006.07A A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, subject to the provisions of 92 NAC 51-006.07.

006.07B Each school district or approved cooperative shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school district's or approved cooperative's criteria applicable for independent educational evaluations.

006.07C A parent is entitled to only one independent educational evaluation at public expense each time the school district or approved cooperative conducts an evaluation with which the parent disagrees.

006.07C1 Public expense means that the school district or approved cooperative either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

006.07D If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either:

006.07D1 Initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate; or

006.07D2 Ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.

006.07E If the school district or approved cooperative initiates a hearing and the final decision is that the school district's or approved cooperative's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

006.07F If a parent requests an independent educational evaluation, the school district or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or approved agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

006.07G If the parent obtains an independent educational evaluation at public expense or shares with the school district or approved cooperative an evaluation obtained at private expense, the results of the evaluation:

006.07G1 Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

006.07G2 May be presented by any party as evidence at a hearing under 92 NAC 55 regarding that child.

006.07H If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

006.07I If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or approved cooperative uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

006.07J Except for the criteria described in 92 NAC 51-006.07I, a school district or approved cooperative may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

007 Individualized Education Program (IEP)

007.01 An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperatives shall meet the requirements of 92 NAC 52. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education laws apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.

007.02 School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child’s IEP.

007.02A At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.

007.02A1 From the end of the school year in which a child reaches age 3, until the child’s sixth birthday, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school readiness and incorporates pre- literacy, language, and numeracy skills for children with an IFSP who are at least three years of age), and that is developed in accordance with the IEP procedures. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child’s parents.

007.02B Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.

007.02C The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

007.02D Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

007.03 IEP Team Participants

007.03A The school district or approved cooperative shall ensure and document that each IEP team includes the following:

007.03A1 The parents of a child with a disability or documentation of 92 NAC 51-007.06D;

007.03A2 Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

007.03A2a The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with 92 NAC 51-007.07A5.

007.03A3 Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;

007.03A4 A representative of the school district or approved cooperative who:

007.03A4a Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

007.03A4b Is knowledgeable about the general education curriculum; and

007.03A4c Is knowledgeable about the availability of resources of the school district or approved cooperative;

007.03A4c(1) A school district or approved cooperative may designate another member of the IEP team to also serve as the school

district or approved cooperative representative, if the criteria in 92 NAC 51-007.03A4 are satisfied.

007.03A5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;

007.03A6 At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

007.03A6a The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative) who invited the individual to be a member of the IEP.

007.03A7 Whenever appropriate, the child with a disability;

007.03A8 For a child attending a nonpublic school, a representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls;

007.03A9 For children receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to ensure participation by the approved service agency, including written communication, or individual or conference telephone calls;

007.03A10 If the purpose of the meeting is to consider postsecondary goals for the child and the transition services needed to assist the child in reaching those goals:

007.03A10a The school district or approved cooperative must invite the child;

007.03A10a(1) If the child does not attend the IEP meeting, the school district or approved cooperative shall take other steps to ensure that the child’s preferences and interests are considered.

007.03A10b To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the school district or approved cooperative must invite a representative of any participating agency that is likely to be responsible for providing or paying for the transition services.

007.03A11 For a child verified in the category of hearing impairment, an educator endorsed to teach a child with hearing impairments.

007.03A12 For a child verified in the category of visual impairment, an educator endorsed to teach a child with visual impairments.

007.04 IEP Team Attendance

007.04A A member of the IEP team described in 92 NAC 51-007.03A2 through 007.03A5 shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district or approved cooperative agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

007.04B A member of the IEP team in 92 NAC 51-007.04A may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

007.04B1 The parent, in writing, and the school district or approved cooperative consent to the excusal; and

007.04B2 The member submits, in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting.

007.05 In the case of a child who was previously served as an infant or toddler under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services.

007.06 Parent Participation

007.06A The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:

007.06A1 Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and

007.06A2 Scheduling the meeting at a mutually agreed on time and place.

007.06B The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a, and 007.05.

007.06B1 For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also must:

007.06B1a Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child in accordance with 92 NAC 51-007.07A9; and

007.06B1b Indicate that the school district or approved cooperative will invite the child to the meeting; and

007.06B1c Identify any other agency that will be invited to send a representative.

007.06C If neither parent can attend the IEP meeting, the school district or approved cooperative shall use other methods to ensure parent participation, including individual or conference telephone calls consistent with 92 NAC 51-007.09H (related to alternate means of meeting participation).

007.06D A meeting may be conducted without a parent in attendance if the school district or approved cooperative is unable to convince the parents they should attend. In this case, the school district must keep a record of its attempts to arrange a mutually agreed on time and place such as:

007.06D1 Detailed records of telephone calls made or attempted and the results of the calls;

007.06D2 Copies of correspondence sent to the parents and any responses received; and

007.06D3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.

007.06E The school district or approved cooperative shall take whatever action is necessary to ensure that the parent understands the proceedings of an IEP conference, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

007.07 IEP Development

007.07A The IEP shall include:

007.07A1 A statement of the child's present levels of academic achievement and functional performance, including:

007.07A1a How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

007.07A1b For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

007.07A2 A statement of measurable annual goals, including academic and functional goals, designed to:

007.07A2a Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in appropriate activities, and 007.07A2b Meet each of the child's other educational needs that result from the child's disability;

007.07A3 For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

007.07A4 A description of how the child’s progress toward meeting the annual goals described in 92 NAC 51-007.07A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

007.07A5 A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

007.07A5a To advance appropriately toward attaining the annual goals;

007.07A5b To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

007.07A5c To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5;

007.07A6 An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 92 NAC 51-007.07A5;

007.07A7 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

007.07A7a The child cannot participate in the regular assessment; and

007.07A7b The particular alternate assessment selected is appropriate for the child; and

007.07A8 The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications;

007.07A9 Beginning not later than the first IEP to be in effect when the child turns 14, and updated annually thereafter.

007.07A9a Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

007.07A9b The transition services (including courses of study) needed to assist the child in reaching those goals; and

007.07A9c If a participating agency, other than the school district or approved cooperative fails to provide the transition services described in the IEP, the school district or approved cooperative shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

007.07A9c(i) Nothing in this Chapter relieves any participating agency, including the State Division of Vocational Rehabilitation, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility of that agency.

007.07A10 Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly re-

quired in 92 NAC 51-007.07A, or to require the IEP team to include information under one component of a child's IEP that is already contained in another component of such IEP.

007.07B In developing, reviewing or revising each child's IEP:

007.07B1 The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

007.07B2 The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

007.07B3 In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.

007.07B4 In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as those needs relate to the child's IEP.

007.07B5 In the case of a child who is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

007.07B6 The IEP team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, shall consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

007.07B7 The IEP team shall consider whether the child needs assistive technology devices and services.

007.07C Services

007.07C1 Routine checking of hearing aids and external components of surgically implanted medical devices.

007.07C1a Each school district and approved cooperative must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

007.07C1b Subject to 92 NAC 51-007.07C1b(1) each school district and approved cooperative must ensure that the external components of surgically implanted medical devices are functioning properly.

007.07C1b(1) For a child with a surgically implanted medical device who is receiving special education and related services under this Chapter, a school district and approved cooperative is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

007.07C2 Physical education services, specially designed if necessary, must be made available to every child with a verified disability receiving a free, appropriate public education, unless the school district or approved cooperative enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

007.07C2a Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

007.07C2a(1) The child is enrolled full time in a separate facility; or

007.07C2a(2) The child needs specially designed physical education as prescribed in the child's individualized education program.

007.07C2b If specially designed physical education is prescribed in a child's individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly or make arrangements for it to be provided through other public or nonpublic programs.

007.07C2c The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.

007.07C3 Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child's:

007.07C3a Special education under 92 NAC 51-003.56;

007.07C3b Related services under 92 NAC 51-003.49; or

007.07C3c Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.

007.07C3d On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

007.07C4 The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.

007.07C4a Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.

007.07C5 Extended School Year Services (ESYS)

007.07C5a Each school district or approved cooperative shall ensure that extended school year services are available as necessary to provide a free appropriate public education consistent with 92 NAC 51-007.07C5b.

007.07C5b Extended School Year (ESY) services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Section 007, that the services are necessary for the provision of a free appropriate public education.

007.07C5c In implementing the requirements of this section, a school district or approved cooperative may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

007.07C6 The need for related services of an instructional nature shall be documented on the IEP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not require the additional verification of a secondary disability.

007.08 Programs for Children who Transfer School Districts or Approved Cooperatives

007.08A Transfer within the same state – If a child with a disability (who had an IEP that was in effect in a previous school district or approved cooperative in Nebraska) transfers to a new school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative either:

007.08A1 Adopts the child's IEP from the previous school district or approved cooperative; or

007.08A2 Develops, adopts, and implements a new IEP that meets the applicable requirements of 92 NAC 51-007.

007.08B Transfer from outside the state – If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative:

007.08B1 Conducts an evaluation pursuant to Section 006 of this Chapter (determined to be necessary by the new school district or approved cooperative); and

007.08B2 Develops, adopts, and implements a new IEP, if appropriate that meets the requirements of 92 NAC 51-007.

007.08C Transmittal of records

007.08C1 To facilitate the transition for a child who transfers schools the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to Section 99.31(a)(2) of Title 34, Code of Federal Regulations.

007.08C2 The previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

007.08C3 Neb. Rev. Stat. §79-2,105 requires that a copy of a public or private school's files or records concerning a student shall be provided at no charge, upon request, to any public or private school to which the student transfers.

007.09 IEP Meeting

007.09A A meeting to develop an IEP for a child must be held within thirty (30) calendar days of a determination that the child needs special education and related services.

007.09B After the initial IEP meeting, IEPs must be in effect at the beginning of each school year.

007.09C The IEP team shall review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.

007.09D The school district or approved cooperative shall provide a copy of the IEP to parents at no cost.

007.09E In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

007.09E1 If changes are made to the child's IEP in accordance with 92 NAC 51-007.09E, the school district or approved cooperative must ensure that the child's IEP team is informed of those changes.

007.09F Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in 92 NAC 51-007.09E of this section, by

amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

007.09G To the extent possible, the school district or approved cooperative shall encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

007.09H When conducting IEP team meetings and placement meetings and carrying out administrative matters (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district or approved cooperative may agree to use alternative means of meeting participation, such as video conferences and conference calls.

007.10 The IEP team shall revise the IEP as appropriate to address:

007.10A Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;

007.10B The results of any reevaluation conducted under 92 NAC 51-006.05A;

007.10C The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;

007.10D The child's anticipated needs; or

007.10E Other matters.

007.11 Children with Disabilities in Adult Prisons

007.11A The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

007.11A1 The requirements of 92 NAC 51-007.07A7 (relating to participation of children with disabilities in general assessments); and

007.11A2 The requirements of 92 NAC 51-007.07A9 (relating to transition and planning and transition services) do not apply with respect to such children who will reach age 21 before they will be eligible to be released from prison, based on consideration of their sentence and eligibility of early release.

007.11B Subject to 92 NAC 51-007.11B1, the IEP team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child’s IEP or placement if the State has demonstrated a

bona fide security or compelling penological interest that cannot otherwise be accommodated.

007.11B1 The requirements of 92 NAC 51-003.31 and 007.07 (relating to IEPs), and 92 NAC 51- 008.01A (relating to LRE), do not apply with respect to the modifications described in 92 NAC 51-007.11B.

008 Placement of Children With Disabilities

008.01 Least Restrictive Environment (LRE) Requirements

008.01A The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

008.01B Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.

008.01C In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:

008.01C1 The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

008.01C2 The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.

008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

008.01D1 The continuum must:

008.01D1a Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and

008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

008.01E The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:

008.01E1 Is determined at least annually;

008.01E2 Is based on his or her individualized education program (IEP); and

008.01E3 Is as close as possible to the child's home.

008.01F The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.

008.01G Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.

008.01H In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.

008.01I A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

009 Procedural Safeguards

009.01 Parent Participation in Meetings

009.01A The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

009.01B Each school district or approved cooperative must provide notice consistent with 92 NAC 51-007.06A1 and 007.06B to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 92 NAC 51-009.01A.

009.01C A meeting does not include informal or unscheduled conversations involving school district or approved cooperative’s personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that

school district or approved cooperative's personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

009.02 Parent Involvement in Placement Decisions

009.02A The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.

009.02B In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.

009.02C If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

009.02D A placement decision may be made by a team without the involvement of the parents' participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.06D.

009.03 Opportunity to Examine Records

009.03A The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

009.03B Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

009.03B1 As used in 92 NAC 51-009.03B, participating agency means any agency or institution that collects, maintains or uses personally identifiable information or from which information is obtained under this Chapter.

009.03B2 The right to inspect and review education records includes:

009.03B2a The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and

009.03B2b The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

009.03B2c The right to have a representative of the parent inspect and review the records.

009.03B3 A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

009.03C Record of Access

009.03C1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating service agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

009.03D Records On More Than One Child

009.03D1 If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

009.03E List of Types and Locations of Information

009.03E1 Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the participating agency.

009.03F Fees

009.03F1 A participating agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

009.03F2 A participating agency may not charge a fee to search for or to retrieve information.

009.03G Amendment of Records at Parent's Request

009.03G1 A parent who believes that information in education records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child may request the participating agency which maintains the information to amend the information.

009.03G2 The participating agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

009.03G3 If the participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

009.03H Opportunity for a Local Administrative Review

009.03H1 The participating agency shall, on request, provide an opportunity for a local administrative review to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

009.03I Result of Local Administrative Review

009.03I1 If, as a result of the local administrative review, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

009.03I2 If, as a result of the local administrative review, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the participating agency shall inform the parent of the right to place in the records the participating agency maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency.

009.03I3 Any explanation placed in the records of the child must:

009.03I3a Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the participating agency; and

009.03I3b If the records of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

009.03J Consent for Release of Records

009.03J1 Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies in accordance with 92 NAC 51-009.03H1 unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

009.03J2 Except as provided in 92 NAC 51-009.03J3 and 009.03J4, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this Chapter.

009.03J3 Parental consent, or the consent of an eligible child who has reached the age of majority, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 92 NAC 51-007.03A10b.

009.03J4 If a child is enrolled, or is going to enroll in a nonpublic school that is not located in the school district of the parent’s residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent’s residence.

009.03K Safeguards

009.03K1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

009.03K2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

009.03K3 All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

009.03K4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the

participating agency who may have access to personally identifiable information.

009.03L Records Regarding Migratory Children with Disabilities

009.03L1 The school district or approved cooperative shall cooperate in the Federal Secretary of Education's efforts under section 1413(a)(9) of the Individuals with Disabilities Education Act of 2004 (See Appendix A) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging among the States, health and education information regarding such children.

009.03M Retention and Destruction of Information and Records

009.03M1 The school district or approved cooperative shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.

009.03M2 The school district or approved cooperative shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

009.03M3 The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

009.04 Procedural Timelines

009.04A Each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.

009.04A1 Referral, notice to parents (See 92 NAC 51-009.05), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation.

009.04A1a The 45 school day timeline shall not apply to a school district or approved cooperative if:

009.04A1a(1) A child enrolls in a school served by the school district or approved cooperative after the relevant timeline in 92 NAC 51-009.04A1 has begun and prior to a determination by the child's previous school district or approved cooperative as to whether the

child is a child with a disability, but only if the subsequent school district or approved cooperative is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district or approved cooperative agree to a specific time when the evaluation will be completed; or

009.04A1a(2) The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

009.04A2 Upon completion of a multidisciplinary team verification decision, school districts or approved cooperatives shall provide a reasonable notification and conduct an individualized education program conference within 30 calendar days.

009.04A3 As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.

009.05 Prior Written Notice

009.05A Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:

009.05A1 Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or

009.05A2 Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

009.05B Such prior written notice shall include:

009.05B1 A description of the action proposed or refused by the school district or approved cooperative;

009.05B2 An explanation of why the school district or approved cooperative proposes or refuses to take the action;

009.05B3 A description of other options the IEP team considered and the reasons why those options were rejected;

009.05B4 A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;

009.05B5 A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;

009.05B6 A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and

009.05B7 Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.

009.05C The notice must be written in language understandable to the general public, and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.

009.05D If the native language or other mode of communication of the parents is not a written language, the school district or approved cooperative shall take steps to ensure:

009.05D1 That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;

009.05D2 That the parents understand the content of the notice; and

009.05D3 That there is written evidence that the requirements of this section have been met.

009.06 Procedural Safeguards Notice

009.06A A copy of the procedural safeguards available to the parents of a child with a disability shall be given by the school district or approved cooperative to the parents only one time a school year, except that a copy shall also be given to the parents:

009.06A1 Upon initial referral or parental request for evaluation;

009.06A2 Upon request by a parent;

009.06A3 Upon receipt by the school district or approved cooperative of the first occurrence of the filing of a complaint under 92 NAC 51-009.11 and the first occurrence of filing a special education due process case under 92 NAC 55; and

009.06A4 In accordance with the discipline procedures in 92 NAC 51-016.

009.06B The procedural safeguards notice shall include a full explanation of all of the procedural safeguards relating to:

009.06B1 Independent educational evaluation;

009.06B2 Prior written notice;

009.06B3 Parental consent;

009.06B4 Access to educational records;

009.06B5 Opportunity to present and resolve disputes through the due process hearings and the state complaint procedures including;

009.06B5a The time period in which to file a state complaint or petition for a due process hearing;

009.06B5b The opportunity for the school district or approved cooperative to resolve the dispute; and

009.06B5c The difference between the due process system and the state complaint procedures; including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.

009.06B6 The child's placement during pendency of due process proceedings;

009.06B7 Procedures for students subject to placement in an interim alternative educational setting;

009.06B8 Requirements for unilateral placement by parents of children in nonpublic schools at public expense;

009.06B9 The availability of mediation;

009.06B10 Due process hearings, including requirements for disclosure of evaluation results and recommendations;

009.06B11 Civil actions, including the time period in which to file such actions; and

009.06B12 Attorney's fees.

009.06C The notice of the procedural safeguards provided to the parent must be written in language understandable to the general public and provided in the native language of the parent as required by 92 NAC 51-009.05C and 009.05D.

009.06D The school district or approved cooperative may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

009.07 A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the school district or approved cooperative makes such option available.

009.08 Parental Consent

009.08A Parental Consent for Initial Evaluations

009.08A1 The school district or approved cooperative proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 92 NAC 51-003.08 must obtain informed consent, consistent with 92 NAC 51-003.09, from the parent of the child before conducting the evaluation.

009.08A2 Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

009.08A3 The school district or approved cooperative must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

009.08A4 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the school district or approved cooperative is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

009.08A4a Despite reasonable efforts to do so, the school district or approved cooperative cannot discover the whereabouts of the parent of the child;

009.08A4b The rights of the parents of the child have been terminated in accordance with the State law; or

009.08A4c The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

009.08A5 If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 92 NAC 51-009.08A1 or the parent fails to respond to a request to provide consent, the school district or approved cooperative may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 92 NAC 51-009 (including the mediation procedures or the due process procedures), if appropriate.

009.08A5a The school district or approved cooperative does not violate its obligation under 92 NAC 51-006 to locate and identify the child as a child with a disability if it declines to pursue the evaluation.

009.08B Consent for Services

009.08B1 A school district or approved cooperative that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

009.08B1a Participation in or attendance at programs by children with verified disabilities from date of diagnosis to age five shall be voluntary as specified by the parent.

009.08B2 The school district or approved cooperative must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

009.08B3 If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services the school district or approved cooperative:

009.08B3a May not use the procedures in 92 NAC 51-009, except the mediation procedures in 79-009.12, in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B3b Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

009.08B3c Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child.

009.08B4 If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing

for the continued provision of special education and related services, the school district or approved cooperative:

009.08B4a May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 92 NAC 51-009.05 before ceasing the provision of special education and related services.

009.08B4b May not use the procedures in 92 NAC 51-009, except the mediation procedures in 79-009.12, in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B4c Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with further special education and related services; and

009.08B4d Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child for further provision of special education and related services.

009.08C Consent for Reevaluations

009.08C1 Subject to 92 NAC 51-009.08C2, each school district or approved cooperative must obtain informed parental consent, in accordance with 92 NAC 51-009.08A1, prior to conducting any reevaluation of a child with a disability.

009.08C1a If the parent refuses to consent to the reevaluation, the school district or approved cooperative may, but is not required to, pursue the reevaluation by using the consent override procedures described in 92 NAC 51-009.08A5. The school district or approved cooperative does not violate its obligation to locate and identify the child as a child with a disability if it declines to pursue the evaluation or reevaluation.

009.08C2 The informed parental consent described in 92 NAC 51-009.08C1 need not be obtained if the school district or approved cooperative can demonstrate that:

009.08C2a It made reasonable efforts to obtain such consent; and

009.08C2b The child’s parent has failed to respond.

009.08D Other Consent Requirements

009.08D1 Parental consent is not required before:

009.08D1a Reviewing existing data as part of an evaluation or a reevaluation; or

009.08D1b Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

009.08D2 A school district or approved cooperative may not use a parent's refusal to consent to one service or activity under 92 NAC 51-009.08A, 92 NAC 51-009.08B or 92 NAC 51-009.08C to deny the parent or child any other service, benefit, or activity of the school district or approved cooperative, except as required by this Chapter.

009.08D3 If a parent of a child who is home schooled or placed in a non-public school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district or approved cooperative may not use the consent override procedures (described in 92 NAC 51-009.08A5 and 009.08C1); and

009.08D3a The school district or approved cooperative is not required to consider the child as eligible for services under 92 NAC 51-015.

009.08D4 To meet the reasonable efforts requirement in 92 NAC 51-009.08A3, 009.08A4a, 009.08B2, and 009.08C2a, the school district or approved cooperative must document its attempts to obtain parental consent using the procedures in 92 NAC 51-007.06.

009.09 Consent and Insurance (see Section 012.09 for Use of Public Benefits or Insurance)

009.09A Children with Disabilities covered by Public Benefits or Insurance

009.09A1 Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with 92 NAC 51-009.09A2, school districts or approved cooperatives must obtain written, parental consent that:

009.09A1a Meets the requirements of 34 CFR §99.30 (FERPA) and 34 CFR §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under 34 CFR 300), and the

agency to which the disclosure may be made (e.g., the State's public benefits or insurance programs (e.g., Medicaid)); and

009.09A1b Specifies that the parent understands and agrees that the school district or approved cooperative may access the parent's or child's public benefits or insurance to pay for services under this Chapter.

009.09A2 Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school district or approved cooperative must provide written notification, consistent with 92 NAC 51-009.05C and 009.05D, to the child's parents, that includes:

009.09A2a A statement of the parental consent provisions in 92 NAC 51-009.09A1a and 009.09A1b of this section;

009.09A2b A statement of the "no cost" provisions in paragraphs 92 NAC 51-012.09B1 through 012.09B3;

009.09A2c A statement that the parents have the right under 34 CFR Part 99 and Part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

009.09A2d A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and Part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

009.09B Children with Disabilities covered by Private Insurance

009.09B1 With regard to services required to provide FAPE to an eligible child under this Chapter, a school district or approved cooperative may access the parents' private insurance proceeds only if the parents provide consent consistent with 92 NAC 51-003.09.

009.09B2 Each time the school district or approved cooperative proposes to access the parent's private insurance proceeds, the school district or approved cooperative must:

009.09B2a Obtain parental consent in accordance with 92 NAC 51-009.09B1; and

009.09B2b Inform the parents that their refusal to permit the school district or approved cooperative to access their private insurance does not relieve the school district or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

009.10 Appointment of Surrogates

009.10A Each school district or approved cooperative shall ensure that the rights of a child with a disability are protected if:

009.10A1 No parent can be identified;

009.10A2 The school district or approved cooperative, after reasonable efforts, cannot locate a parent;

009.10A3 The child is an unaccompanied homeless youth; or

009.10A4 The child is a ward of the State or court.

009.10A4a In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements in 92 NAC 51-009.10D3.

009.10B The duty of the school district or approved cooperative under 92 NAC 51-009.10A includes the assignment of an individual to act as a surrogate for the parents. This must include a method;

009.10B1 For determining whether a child needs a surrogate parent and,

009.10B2 For assigning a surrogate parent to the child.

009.10C The school district or approved cooperative may select a surrogate parent in any way permitted under State law and the district or approved cooperative shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 calendar days after there is a determination that the child needs a surrogate.

009.10D In order to qualify, a surrogate must be a person who:

009.10D1 Has no personal or professional interest that conflicts with the interest of the child he or she represents;

009.10D2 Has knowledge and skills that ensure adequate representation of the child; and

009.10D3 Is not an employee of any public agency which is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

009.10D3a In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 92 NAC 51-009.10D3, until a surrogate parent can be appointed that meets all the requirements of 92 NAC 51-009.10D.

009.10E The surrogate may represent the child in all matters relating to:

009.10E1 The identification, evaluation, and educational placement of a child; and

009.10E2 The provision of a free appropriate public education to the child.

009.10F The services of the surrogate parent shall be terminated when:

009.10F1 The child is no longer eligible for a surrogate parent under 92 NAC 51-009.10A;

009.10F2 A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or

009.10F3 The surrogate parent fails to fulfill his or her duties as a surrogate parent.

009.10G Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 92 NAC 55.

009.10H The surrogate parent and the school district or approved cooperative which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

009.11 State Complaint Procedures

009.11A An organization or individual may file a signed written complaint under the procedures described in 92 NAC 51-009.11B.

009.11B The complaint must include:

009.11B1 A statement that the public agency has violated a requirement of 92 NAC 51, 34 CFR 300 or Part B of the IDEA;

009.11B2 The facts on which the statement is based;

009.11B3 The signature and contact information for the complainant; and

009.11B4 If alleging violations with respect to a specific child –

009.11B4a The name and address of the residence of the child;

009.11B4b The name of the school the child is attending;

009.11B4c In the case of a homeless child or youth within the meaning of section 725(2C) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

009.11B4d A description of the nature of the problem of the child, including facts relating to the problem; and

009.11B4e A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

009.11B5 The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 92 NAC 51-009.11.

009.11B6 The party filing the complaint must forward a copy of the complaint to the school district or approved cooperative serving the child at the same time the party files the complaint with Nebraska Department of Education Office of Special Education.

009.11C If a complaint meeting the requirements of 92 NAC 51-009.11B is received, the following procedures will be carried out:

009.11C1 Within fourteen (14) calendar days of receipt of the written, signed complaint, an assigned Office of Special Education official shall notify in writing each complainant and the school district or approved cooperative against which the violation has been alleged, that the complaint has been received. This written notification shall include a copy of the complaint and the substance of the alleged violation. The school district or approved cooperative shall have fourteen (14) calendar days to submit a written response.

009.11C2 Office of Special Education officials will provide the school district or approved cooperative with the opportunity to respond to the complaint, including, at a minimum:

009.11C2a At the discretion of the school district or approved cooperative, a proposal to resolve the complaint; and

009.11C2b An opportunity for a parent who has filed a complaint and the school district or approved cooperative to voluntarily engage in mediation consistent with 92 NAC 51-009.12.

009.11C3 Office of Special Education officials will investigate each complaint received from an individual or organization (including an individual or organization from another state) to determine whether there has been a failure to comply with this Chapter and may require further written or oral submission of information by all parties and may conduct an independent on-site investigation if necessary. The complainant will have the opportunity to submit additional information either orally or in writing, about the allegation.

009.11C4 Within sixty (60) calendar days of receipt of a signed written complaint, the Department of Education Office of Special Education will review all relevant information and provide written notification of findings of facts and conclusions and the basis for such findings to all parties involved.

009.11C5 An extension of the time limit in 92 NAC 51-009.11C4 will be permitted only if:

009.11C5a Exceptional circumstances exist with respect to a particular complaint; or

009.11C5b The parent and the school district or approved cooperative involved agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution.

009.11C6 If it is determined there has been a failure to comply, there will be included in the notification of findings the specific steps which must be taken by the school district or approved cooperative to bring the school district or approved cooperative into compliance, including technical assistance, negotiations and corrective actions necessary to achieve compliance. The notification shall also set forth a reasonable period of time to voluntarily comply.

009.11C7 If the school district or approved cooperative does not demonstrate compliance within the period of time set forth in the notice of findings, the matter will be subject to the procedures outlined in 92 NAC 51-004.09.

009.11C8 If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of that hearing, the Office of Special Education officials shall set aside any part of the state complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the state complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 92 NAC 51-009.11.

009.11C9 If an issue is raised in a complaint filed under 92 NAC 51-009.11 that has previously been decided in a due process hearing involving the same parties:

009.11C9a The hearing decision is binding; and

009.11C9b The Nebraska Department of Education must inform the complainant to that effect.

009.11C10 A complaint alleging a school district's or approved cooperative's failure to implement a due process decision must be resolved by the Nebraska Department of Education.

009.12 Mediation

009.12A School districts or approved cooperatives shall implement the procedures established in Section 009 to allow parties to resolve disputes involving any matter arising under this Chapter or Part B of the IDEA including matters arising prior to the filing of a due process hearing petition or through a mediation process .

009.12A1 The procedures for seeking mediation initiated by either the parent(s) or school district or approved cooperative include:

009.12A1a Contacting the Nebraska Office of Dispute Resolution who will

009.12A1b Arrange a meeting, invite both parties and conduct the mediation in an attempt to resolve the dispute.

009.12B The procedures shall ensure that the mediation process:

009.12B1 Is voluntary on the part of the parties;

009.12B2 Is not used to deny or delay a parent's right to a due process hearing under 92 NAC 55, or to deny any other rights afforded under this Chapter; and

009.12B3 Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

009.12C The school district or approved cooperative may implement the procedures in Section 009 to offer parents and schools or approved cooperatives that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with:

009.12C1 A parent training and information center or community parent resource center in this State established under Section 671 or 672 of the IDEA, or

009.12C2 An appropriate alternative dispute resolution entity to encourage the use, and explain the benefits of the mediation process to the parents.

009.12D The Nebraska Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services for use by school districts, approved cooperatives, and parents.

009.12E The Nebraska Department of Education shall bear the cost of the mediation process, including the costs of meetings described in 92 NAC 51-009.12C.

009.12F Each session in a mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

009.12G In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:

009.12G1 States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

009.12G2 Is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

009.12G3 Is enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.12H Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court of a state receiving assistance under Part B of the IDEA as amended in 2004.

009.12I An individual who serves as a mediator under this Chapter:

009.12I1 May not be an employee of:

009.12I1a The Nebraska Department of Education or of the school district or approved cooperative that is involved in the education or care of the child; or

009.12I1b An agency that is providing direct services to a child who is the subject of the mediation process; and

009.12I1c Must not have a personal or professional interest that conflicts with the person's objectivity.

009.12I2 A person who otherwise qualifies as a mediator is not an employee of a school district or approved cooperative or the Nebraska Department of Education solely because he or she is paid by the agency to serve as a mediator.

009.13 Resolution Process

009.13A Resolution Meeting

009.13A1 Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 92 NAC 55, the school district or approved cooperative must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

009.13A1a Includes a representative of the school district or approved cooperative who has decision-making authority on behalf of that school district or approved cooperative; and

009.13A1b May not include an attorney to the school district or approved cooperative unless the parent is accompanied by an attorney.

009.13A2 The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district or approved cooperative

has the opportunity to resolve the dispute that is the basis for the due process complaint.

009.13A3 The meeting described in 92 NAC 51-009.13A1 and 009.13A2 need not be held if:

009.13A3a The parent and the school district or approved cooperative agree in writing to waive the meeting; or

009.13A3b The parent and the school district or approved cooperative agree to use the mediation process described in 92 NAC 51-009.12.

009.13A4 The parent and the school district or approved cooperative determine the relevant members of the IEP team to attend the meetings.

009.13B Resolution Period

009.13B1 If the school district or approved cooperative has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

009.13B2 Except as provided in this section, the timeline for issuing a final decision begins at the expiration of this 30-day period.

009.13B3 Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding 92 NAC 51-009.13B1 and 009.13B2, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

009.13B4 If the school district or approved cooperative is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 92 NAC 51-007.06D), the school district or approved cooperative may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

009.13B5 If the school district or approved cooperative fails to hold the resolution meeting specified in 92 NAC 51-009.13A within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

009.13C Adjustments to the 30-day Resolution Period

009.13C1 The 45-day timeline for the due process hearing starts the day after one of the following events:

009.13C1a Both parties agree in writing to waive the resolution meeting;

009.13C1b After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

009.13C1c If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or the school district or approved cooperative withdraws from the mediation process.

009.13D Written Settlement Agreement

009.13D1 If a resolution to the dispute is reached at the meeting described in 92 NAC 51-009.13A1 and 009.13A2, the parties must execute a legally binding agreement that is:

009.13D1a Signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind the school district or approved cooperative; and

009.13D1b Enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.13E Agreement Review Period

009.13E1 If the parties execute an agreement pursuant to 92 NAC 51-009.13D, a party may void the agreement within 3 business days of the agreement's execution.

009.14 Special Education Due Process Hearings

009.14A Whenever a due process complaint has been received under 92 NAC 55 or Section 016 of this Chapter, the parents or the school district or approved cooperative shall have an opportunity for an impartial due process hearing consistent with the procedures in 92 NAC 55 and 92 NAC 51-009.13.

009.14B A parent or a school district or approved cooperative may initiate a hearing on any of the matters described in 92 NAC 51-009.05A relating to the identification, evaluation or educational placement of the child with a disability, or the provision of FAPE to the child by filing a petition pursuant to 92 NAC 55.

009.14C When a hearing is initiated under 92 NAC 55, the school district or approved cooperative shall inform the parents of the availability of mediation described in 92 NAC 51-009.12.

009.14D The school district or approved cooperative shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if the parent or the school district or approved cooperative initiates a hearing under 92 NAC 55.

009.14E Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

010 Qualifications of Special Education Personnel for Program Approval and Reimbursement

010.01 School districts and approved cooperatives shall ensure that all personnel necessary to carry out this Chapter are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965.

010.01A Instructional personnel shall hold valid Nebraska Department of Education certification, be endorsed in the assigned area. Instructional personnel may serve children with visual impairments and children with hearing impairments in a multicategorical program if the instructional personnel have attended training approved by the Department of Education or have received consultation from an individual endorsed in the area of visual hearing impairments. This section does not apply to individuals providing inservice.

010.01B Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school shall be a teacher meeting IDEA 2004 criteria as defined in 92 NAC 51-003.62.

010.01C School districts or approved cooperatives shall take measurable steps to recruit, hire, train, and retain teachers meeting IDEA 2004 criteria to provide special education and related services.

010.01C1 School districts and approved cooperatives shall make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the IDEA.

010.01D Approvable endorsements for program approval and reimbursement shall include:

	Categorical Assignment	NDE Approvable Endorsement

010.01D1	Adaptive Physical Education	Adaptive Physical Education
010.01D2	Autism	Special Education Functional Academic Skills and Independent Living Specialist Special Education Special Education Inclusion and Collaboration Specialist Special Education Behavior Intervention Specialist Speech-Language Pathologist
010.01D3	Emotional Disturbance	Special Education Behavior Intervention Specialist Special Education
010.01D4	Deaf-Blindness	Special Education Visual Impairment Special Education Functional Academic Skills and Independent Living Specialist
010.01D5	Diagnostic Services	School Psychologist Audiologist Speech-Language Pathologist or any special education endorsement
010.01D6	Early Childhood Special Education in Home and Centerbased Programs for Children Birth-Age Five	Early Childhood plus any Special Education Early Childhood Inclusive Special Education Early Childhood Special Education Special Education Early Intervention Specialist
010.01D7	Hearing Impairments	Deaf or Hard of Hearing
010.01D8	Home (School Age) and Hospital (Birth to 21) Services	Any Teaching endorsement
010.01D9	Home-School Liaison	Any special education endorsement

		School Counselor
010.01D10	Intellectual Disability	Special Education
010.01D11	Multicategorical Programs	Instructional personnel serving students in a multicategorical program shall be considered to be endorsed in the assigned area if an endorsement is held in at least one of the disability categories served
010.01D12	Multiple Disabilities	Special Education Functional Academic Skills and Independent Living Specialist
010.01D13	Orthopedic Impairments	Special Education
010.01D14	Program Supervision	Administrative or Supervisory certificate and at least one Special Education endorsement or any Special Education Administrative or Supervisory certificate
010.01D15	Learning Disabilities	Special Education Inclusion and Collaboration Specialist Special Education
010.01D16	Speech-Language Impairments	Speech-Language Pathologist
010.01D17	Substitute Teacher	Any Teaching certificate
010.01D18	Traumatic Brain Injury	Special Education Functional Academic Skills and Independent Living Specialist Special Education Special Education Behavior Intervention Specialist Speech-Language Pathologist Special Education Inclusion and Collaboration Specialist
010.01D19	Visual Impairment	Special Education Visual Impairment
010.01D20	Work Study Program or Transition Program	Any special education endorsement School Counselor Vocational Special Needs Cooperative Education – Diversified Occupations

		Secondary Transition Specialist

010.02 For purposes of 92 NAC 51-010.01D5, 010.01D14 and 010.01D20 “special education endorsement” shall include any approvable endorsement under 92 NAC 51-010.01D except 010.01D8, 010.01D17 and excluding the specific endorsements of guidance and counseling, educational audiologist, vocational special needs, co-operative education diversified occupations and special services certificate for school transition specialist.

010.03 Related Services Personnel and Paraprofessionals

010.03A Related services personnel and paraprofessionals shall hold any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

010.03B Related services personnel who deliver services in their discipline or profession shall not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

010.03C Paraprofessionals shall be appropriately trained and supervised by qualified special education personnel to be used to assist in the provision of special education and related services under this Chapter.

010.03D A paraprofessional shall not teach, as defined in Neb. Rev. Stat. §79-101.12.

010.04 Personnel providing special education services who do not hold Department of Education certification and endorsement, shall be licensed by the appropriate State of Nebraska Board of Examiners.

010.05 Personnel employed by approved service agencies shall be certified by the Department of Education or shall hold the credential or training required by the licensing standard under which the service providers operate.

010.06 Qualified Educational Sign Language Interpreters

010.06A In order to be a qualified educational sign language interpreter for the purposes of 92 NAC 51-010.06, an individual must have a high school diploma, high school equivalency diploma or higher, and meet the requirements of 92 NAC 51-010.06A1 or 010.06A2:

010.06A1 Receive a passing score on the EIPA written exam, and attain and maintain one or more of the following competency levels as measured by the following assessments:

010.06A1a Educational Interpreter Performance Assessment (EIPA), Competency level 4.0 or above

010.06A1b Registry of Interpreters of the Deaf Certification (RID)

010.06A1c National Association of the Deaf (NAD) Competency level 4.0 or above

010.06A1d National Interpreter Certification (NIC)

010.06A1e Quality Assurance Screening Test (QAST) Competency level 4.0

010.06A2 Educational interpreters providing sign language interpreter services in a school district or approved cooperative for two consecutive school years immediately prior to the effective date of this Rule shall be considered qualified educational sign language interpreters if:

010.06A2a the individual has attained a competency level of 3.5 or higher on the EIPA, and

010.06A2b the individual has met the requirements of 92 NAC 51-010.06F.

010.06B Subject to the exceptions in 92 NAC 51-010.06C, and 010.06D, school districts and approved cooperatives shall ensure that all sign language interpreters employed by such school districts or approved cooperatives to provide special education services are qualified educational sign language interpreters who meet the competency requirements in 92 NAC 51-010.06A.

010.06C If the school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ for up to one year an interpreter who has received a “Skills at or above the required level” or a “Hire with Caution” on the EIPA pre-hire screening.

010.06D If a school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ an interpreter who demonstrates the minimum competency level of 3.0 on the EIPA, NAD or QAST. The school district or approved cooperative must require that the interpreter participate in a professional development plan designed to improve his or her skills and enable him or her to become a qualified educational sign language interpreter . The plan shall include at least 40 clock hours of training in interpreting per year (August 1 to July 31). The plan shall be approved by the Regional Program State Coordinator. The Regional Program

State Coordinator and the school district or approved cooperative must monitor completion of the professional development plan.

010.06E If an interpreter does not complete the requirements specified in 92 NAC 51-010.06D, the school district or approved cooperative must reopen the position and seek a qualified educational sign language interpreter.

010.06F School districts and approved cooperatives shall require that all sign language interpreters employed by the school districts or approved cooperatives to deliver special education services submit evidence to the school district or approved cooperative of having obtained 24 clock hours of professional development every two years (August 1-July 31). This should include at least 18 hours of training related to sign language interpreting. The remaining six hours of training can be in any of the following areas: history, psychology and sociology of the Deaf and hard of hearing; child development; language development; curriculum development; methods of instruction; interpreting for students who are deaf-blind; legal and ethical issues for educational interpreters.

010.06G If a sign language interpreter cannot provide the evidence required in 92 NAC 51-010.06F of the professional development, the school district or approved cooperative shall require that the sign language interpreter be retested and achieve the applicable competency level specified in 92 NAC 51-010.06A, 010.06C, or 010.06D.

010.07 Notwithstanding any other individual right of action that a parent or student may maintain under this Chapter, nothing in this section or Chapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to meet IDEA 2004 criteria or to prevent a parent from filing a complaint about staff qualification pursuant to Section 009 of this Chapter.

011 School District Budget Development and Reimbursement Process for School Age Programs

011.01 General Information

011.01A The special education assurances and flexible funding application of a school district and approved cooperative shall be submitted electronically via the NDE website to the Office of Special Education. Any amendment to the assurances and flexible funding application shall be subject to the same review as the initial assurances and flexible funding application.

011.01A1 The fiscal year for school age special education programs shall be September 1 to August 31.

011.01B The allowable and reimbursable costs for special education services are restricted to the following items, which shall be documented and are subject to audit;

011.01B1 Salaries of special education personnel as per 92 NAC 51-010 and clerical personnel directly associated with special education services;

011.01B2 School district or approved cooperative share of fringe benefits for the special education staff:

011.01B2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability, and unemployment insurance.

011.01B3 Inservice costs directly related to the special education programs provided that:

011.01B3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with a disability and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

011.01B3b Allowable costs include: presenter fees and expenses; mileage; board and room of staff to attend inservice programs; costs of substitutes for staff attending inservice programs; cost of inservice programs which directly assist special and regular educators in providing appropriate programs for children with a verified disability in their classrooms; and costs of special education workshop attendance.

011.01B3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable reimbursable expense.

011.01B4 Travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

011.01B4a Children attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services; and

011.01B4b Children who are assigned to more than one attendance center to receive special education.

011.01B5 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process.

011.01B6 Costs of transporting children with a disability which are authorized under Neb. Rev. Stat. §79-1129 and Section 014 are budgeted and claimed separately;

011.01B7 Instructional equipment including assistive technology devices and equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) are allowable reimbursable costs under this Chapter. The equipment, supplies, and publications shall be used by the child in association with the implementation of the child's IEP or evaluation. This shall also include equipment, supplies, and publications used by staff when instructing a child with a verified disability; when evaluating a child who is suspected of having a disability; or when reevaluating a child with a verified disability. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include equipment, supplies, and publications used by staff for administrative purposes. This shall not include personal equipment and supplies or life support equipment. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

011.01B8 Those contracted special education services in which children with a disability are served by a service agency whose special education programs and rates have been approved by the Department of Education; and

011.01B9 Costs of acquisition (purchase, lease, lease-purchase), renovation and operation of a mobile unit(s) (i.e., trailers, mobile homes, vans, or any combination thereof) used, or to be used, as mobile learning centers for delivery of special education services to any eligible children with a disability. Reimbursement shall be subject to approval by the Nebraska Department of Education and shall be based on allowable depreciation and reimbursement as per Section 014.

011.01B9a The maximum number of mobile units a school district or approved cooperative may purchase shall be based on the total enrollment of both public and nonpublic schools as per the following schedule:

011.01B9a(1) 1 to 10,000 total enrollment for the maximum purchase of one (1) mobile unit;

011.01B9a(2) 10,001 to 20,000 total enrollment for the maximum purchase of two (2) mobile units;

011.01B9a(3) 20,001 to 30,000 total enrollment for the maximum purchase of three (3) mobile units;

011.01B9a(4) 30,001 to 40,000 total enrollment for the maximum purchase of four (4) mobile units;

011.01B9a(5) 40,001 to 50,000 total enrollment for the maximum purchase of five (5) mobile units; and

011.01B9a(6) all districts with an enrollment exceeding 50,001 for the maximum purchase of six (6) mobile units.

011.01B10 Costs for support services, as defined in Neb. Rev. Stat. §79-1125.01 and 92 NAC 51-003.60, identified in 92 NAC 51-011.05 as the Flexible Funding Option.

011.01C The adjusted average per pupil cost of the preceding year or a portion of that cost shall be calculated according to the following criteria:

011.01C1 For Level I special education services the school district is considered to have expended its adjusted average per pupil cost for each child with a disability who participates in a special education support service(s) for an aggregate of not more than three hours per week.

011.01C2 For Level II special education classroom services in which a child with a disability participates more than an aggregate of three hours per week, the school district shall pay that portion of the adjusted average per pupil cost for that portion of the instructional time devoted to the special education activity;

011.01C3 For Level III special education contractual services the school district shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year to the agency providing the educational program for each child with a disability. In deriving allowable excess cost, the district shall deduct its adjusted average per pupil cost from the cost of the program contracted from the service agency;

011.01C4 When a school district or approved cooperative provides or contracts for a summer school special education program for a child with a verified disability, the cost of such program will be considered for allowable excess cost reimbursement if the child's needs for such program can be verified by review of the IEP.

011.01D Student Special Education Full Time Equivalency (FTE) shall be determined by calculating the percent of aggregate time a child receives special education and related services. In calculating student special education full-time equivalency, time spent in transportation, extended school day and extended school year services are excluded from the aggregate time.

011.01D1 The aggregate amount of a child's special education FTE includes:

011.01D1a The amount of time the child spends in a separate setting other than the regular classroom; and

011.01D1b The amount of time the child with a disability spends in the regular classroom receiving instruction as indicated in the child's IEP from special education staff.

011.01D2 Full-time equivalency (FTE) is calculated each year.

011.02 General Limitation in Budget Development

011.02A Only children with verified disabilities shall receive special education services. This shall include the initial evaluation of a child with a suspected disability, regardless of the outcome of the verification decision. (See Section 006.) Budget development may also include those children receiving support services as defined in 92 NAC 51-003.60.

011.02B Age limits

011.02B1 School age budgets shall be limited to those children with disabilities from age five through the school year in which the child reaches age twenty-one and those children receiving support services as defined in 92 NAC 51-003.60.

011.02B2 A child is age five if that child has reached the age of five years or will reach such an age on or before July 31 of the current school year.

011.02B3 A school district or approved cooperative is eligible for reimbursement for a child's special education program until the end of the school year in which his or her twenty-first birthday occurs.

011.02C Administration and Supervision

011.02C1 Supervision of special education programs is an allowable expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable school age program costs, minus the cost of program supervision. Administration and supervision includes clerical costs directly associated with the supervision of special education programs.

011.02C2 The cost of a superintendent or principal, hired for the purpose of supervising general education, shall not be included in allowable excess cost for special education.

011.02D Related services for a child with a verified disability are reimbursable if the services are listed in the IEP and are necessary for the achievement of educational goals as stated in the IEP.

011.02E Any program that provides residential care shall show the costs of such care separately from the costs of the education program. (See 92 NAC 53.)

011.03 Budget Development for Levels I, II, III

011.03A Level I Special Education Services

011.03A1 The expenditures for Level I (not more than an aggregate of three hours per child per week) special education service programs shall be considered for allowable excess cost reimbursement under the following conditions:

011.03A1a The programs are owned and operated by the school district or approved cooperative and the expenditures are within the allowable categories as stated in Section 011; and

011.03A1b The reimbursement to a school district or approved cooperative contracting for Level I services shall be limited to the rates approved by Commissioner or designee.

011.03B Level II Special Education Services

011.03B1 The expenditures for Level II (more than an aggregate of three hours per child per week) special education services shall be considered for allowable excess cost reimbursement under the following conditions:

011.03B1a The school district or approved cooperative has documented and contributed the portion (total or prorated amount for a full

day program) of the adjusted average per pupil cost into the program; and

011.03B1b The expenditures are within the allowable categories as stated in Section 011.

011.03C Level III Special Education Contractual Services

011.03C1 The school district or approved cooperative may contract for any or all special education programs with approved service agencies.

011.03C1a Those school districts or approved cooperatives contracting for services shall have the service agency specify the cost for each service being provided by the service agency. Reimbursement to such school districts or approved cooperatives shall be limited to the NDE approved rates and the amount of time such services were provided to children with verified disabilities.

011.04 Final Financial Reports

011.04A General Procedures

011.04A1 Excess cost shall mean the difference between (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of children (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the resident school district of each child for the preceding year.

011.04A2 Each school district shall determine an adjusted average per pupil cost.

011.04A2a The adjusted average per pupil cost is to be determined by subtracting those eligible special education expenditures which were included as costs from the total instructional expenditures shown on the Total Instruction line of the district's Annual Financial Report for the previous school year. Divide the result by the total ADM (Average Daily Membership) as reported in the Annual Financial Report for the same year.

011.04B Payments

011.04B1 Payments shall be made by the Nebraska Department of Education to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Addi-

tional payments may be made based upon additional valid claims submitted. Such payments will be based upon the final financial reports submitted on forms or in a manner prescribed by the Office of Special Education which shall include the following:

011.04B1a Allowable expenditures for the preceding school fiscal year including any costs for the Flexible Funding Option.

011.04B1b A list of all special education personnel and their FTE;

011.04B1c Tuition received from contracts and other sources;

011.04B1d Certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid;

011.04B1e A copy of the billings from the service agencies for contracted programs; and

011.04B1f Student Special Education Full Time Equivalency as defined by 92 NAC 51-011.01D for Level II and Level III students.

011.04B2 Such final financial reports shall be submitted electronically via the NDE website to the Department of Education on or before October 31 of each year for the preceding school fiscal year.

011.04B3 A school district or approved cooperative reimbursed for ineligible expenditures, shall be required to return to the Department of Education the amount determined to be ineligible or the amount shall be deducted from subsequent special education payments.

011.04B4 The Department of Education shall withhold any reimbursement provided under Neb. Rev. Stat. §79-1142, to school districts or approved cooperatives which, after final determination by the Department of Education, received funds in excess of the determined allocation for the previous year. Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

011.04B5 Supplementary amendments to any school age final financial report previously approved by the Office of Special Education may be submitted to the Office of Special Education for review and approval within three years of the original due date. Approved amendments may be submitted by the Department of Education to the Legislature for consideration of a supplemental appropriation.

011.04C Determination and Scheduling of Payments

011.04C1 For special education and support services provided, the Nebraska Department of Education shall reimburse each school district in the following school fiscal year a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature and based on allowable excess costs for all special education programs and support services. Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this subsection if such cooperatives or educational service units have complied with the reporting and approval requirements of Neb. Rev. Stat. §79-1155 for cooperative programs which were offered the preceding year.

011.04C2 The amount appropriated by the Legislature for special education programs including support services (Flexible Funding Option) shall be the basis for reimbursement. Payments authorized by Neb. Rev. Stat. §79-1142 shall be made only to a school district or approved cooperative.

011.04C3 Whenever there are due dates specified in this Chapter for submission of required documents, the appropriate items shall be submitted to the Department of Education, Office of Special Education on those dates.

011.04C4 All reports required by this Chapter for submission by school districts and approved cooperatives shall be made in accordance with 92 NAC 51-011.04C3. Failure to do so will result in the implementation of the procedures specified in 92 NAC 51-004.14.

011.05 Flexible Funding projects are optional for school districts or approved cooperatives and are intended for students not identified or verified for special education services but who demonstrate a need in the general curriculum. A school district or approved cooperative choosing to exercise the Flexible Funding Option must submit an application containing a narrative and proposed budget. Proposals shall be submitted electronically via the NDE website to the Nebraska Department of Education, Office of Special Education.

011.05A As part of the Flexible Funding Option Application, the narrative shall describe the support services designed for the targeted student subgroup who would benefit from preventative support services within the context of the general curriculum. The narrative must include:

011.05A1 An estimate of the annual number of students to be served;

011.05A2 The process(es) used in identifying the intended target student subgroup;

011.05A3 Methodology to be used including but not limited to:

011.05A3a The strategies and interventions to be applied;

011.05A3b The staff development activities to be funded for carrying out activities described in the proposal;

011.05A3c The intended student outcomes resulting from implementation;

011.05A3d How the proposed services are different from services currently available to the targeted student subgroup;

011.05A3e The proposed annual measurements that will be used to document changes in student performance; and

011.05A3f If the proposal is linked to school district or building level school improvement activities, information describing the relationship to the School Improvement Action Plan; and

011.05A4 The name of the person(s) responsible for proposal implementation as well as a mailing address, e-mail, fax and phone number.

011.05B Flexible Funding Option Reimbursement

011.05B1 Reimbursement for support services as defined in 92 NAC 51-003.60 shall be limited to a percentage established by the State Board of Education not to exceed ten percent of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services.

011.05B2 Costs shall be limited to allowable costs as defined in Section 011 and the cost of salary and fringe benefits of general education staff providing support services.

011.05B3 Payments will be based upon the costs reported in the Final Financial Report and contingent upon completion and approval of a final report containing actual project costs and a report of student progress including the requirements of 92 NAC 51-012.07D. Payments will be made at the same percentage rate as for all special education reimbursement.

011.05C The fiscal year for the Flex Funding Option shall be September 1 to August 31.

011.06 Ward of the State or Court With a Disability

011.06A When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. §83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the Nebraska Department of Education and such institution is not owned or operated by the district in which the student resided at the time the student became a ward, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the Nebraska Department of Health and Human Services under rules and regulations prescribed by the Department of Health and Human Services and the student remains a resident of the district in which the student resided at the time he or she became a ward. Any student who is a ward of the state or court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. §83-108.04 is a resident of the district in which the student resided at the time the student became a foster child, unless it is determined under Neb. Rev. Stat. §§43-1311 or 43-1312 that the student will not attend such district in which case the student shall be deemed a resident of the district in which the foster family home or foster family is located and shall be claimed in the final financial report of the school district or approved cooperative in which the foster family home or foster home is located.

012 School District or Approved Cooperative Application and Payment Process for IDEA Flow-Through Allocations

012.01 General Information

012.01A Except for purposes specified in 92 NAC 51-012.07A and 92 NAC 51-015.03C1b, IDEA allocations are to be used by school districts or approved cooperatives in accordance with state requirements necessary to provide a free appropriate public education to children with disabilities.

012.01B The Special Education Assurances and IDEA Consolidated Application of a school district and approved cooperative shall be submitted electronically via the NDE website to the Office of Special Education. Any amendments in the Assurances and Application shall be subject to the same review as the initial Assurances and Application.

012.01C Maintenance of Effort

012.01C1 A school district or approved cooperative may not use IDEA flow-through funds to reduce the level of expenditures below the preceding year’s special education expenditures.

012.01C2 A school district or approved cooperative may use up to 50% of the amount received under IDEA that exceeds the amount received under IDEA the previous year to assist with meeting maintenance of effort.

012.01C3 Exceptions for a school district or approved cooperative not meeting IDEA maintenance of efforts requirements as per federal regulations are:

012.01C3a The school district or approved cooperative has reduced special education personnel costs because staff has been replaced with qualified staff earning lower salaries;

012.01C3b The school district or approved cooperative has a decrease in enrollment of children with disabilities;

012.01C3c The school district or approved cooperative is no longer responsible for a high cost needs child(ren) with a disability; and

012.01C3d The school district or approved cooperative has terminated a long-term special education purchase(s).

012.01D Notice and Opportunity for a Hearing Before Disapproval of an Application for IDEA Flow-through Allocations

012.01D1 The Nebraska Department of Education will provide an opportunity for a hearing prior to disapproving an application for special education funds for failure of the application to meet the requirements of the Individuals with Disabilities Education Act and its implementing regulations.

012.01D2 The school district or approved cooperative shall request a hearing in writing within 30 calendar days of receipt of the notice provided indicating that the Office of Special Education intends to recommend disapproval of the school district's or approved cooperative's application. Within 30 days after it receives a request, the Nebraska Department of Education shall hold a hearing on the record and shall review its decision.

012.01D3 Not later than 10 days after the hearing, the Nebraska Department of Education shall issue a written ruling, including the findings of fact and reasons for the ruling.

012.01D4 If the Nebraska Department of Education finds the proposed disapproval of the school district's or approved cooperative's application was contrary to the Individuals with Disabilities Education Act and its implementing regulations or the Nebraska Special Education Act and its implementing regulations, the Department shall approve the application.

012.01D5 If the Nebraska Department of Education disapproves the school district's or approved cooperative's application, the school district or approved cooperative may appeal to the U.S. Secretary of Education. The school district or approved cooperative shall file a notice for appeal within 20 days after the school district or approved cooperative has been notified by the Nebraska Department of Education of the results of the hearing. If supported by substantial evidence, the findings of the Nebraska Department of Education shall be final.

012.01D6 The Nebraska Department of Education will make available at reasonable times and places all records of the Department pertaining to any review or appeal the school district is conducting under 34 CFR 76.401 including records of other school districts or approved cooperatives.

012.02 IDEA Base Flow-through Allocation

012.02A First priority for use of the school district or approved cooperative IDEA base flow-through allocation is early childhood special education (Below Age Five programs and transportation).

012.02A1 IDEA base flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.02B The IDEA base flow-through allocation is distributed to school districts or approved cooperatives based on federal regulations implementing Part B of the IDEA.

012.02C The fiscal year for early childhood special education programs shall be September 1 to August 31.

012.03 The following additional reports shall be submitted to the Nebraska Department of Education for early childhood special education (Below Age Five):

012.03A Final Financial Reports

012.03A1 The Nebraska Department of Education shall make payments to school districts and approved cooperatives based on an approved IDEA Application and requests for payments submitted and supported with documentation. If applicable, a supplemental final grant payment will be made to qualifying school districts based on the Below Age Five final financial reports submitted to the Nebraska Department of Education which shall include the following:

012.03A1a Allowable expenditures for the appropriate school fiscal year;

012.03A1b A list of all special education staff and their FTE;

012.03A1c Tuition received from contracts and other sources;

012.03A1d Certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid; and

012.03A1e A copy of the billings from the service agencies for contracted programs.

012.03A2 Final financial reports shall be submitted to the Nebraska Department of Education on or before October 1 of each year for the preceding fiscal year.

012.03A3 A school district or approved cooperative paid for ineligible expenditures shall be required to return to the Nebraska Department of Education the amount determined to be ineligible; repayment of funds equal to the amount determined to be ineligible shall be made with non-federal funds and in no case may federal funds be used to refund the amount found to be misspent or misapplied.

012.03A4 The Nebraska Department of Education shall withhold any payments provided under Neb. Rev. Stat. §79-1132 to school districts or approved cooperatives which, after final determination, received funds in excess of the appropriate allocation for the previous year(s). Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

012.03A5 Allowable costs incurred for children with disabilities below age five shall be considered as total excess cost. The Nebraska Department of Education shall provide grants for the costs of the special education programs approved by the Nebraska Department of Education to the school district of residence for children with disabilities who are less than five years of age. The grants shall be one hundred percent of the costs of such programs and shall continue to be one hundred percent as long as the funding for such grants comes from federal funds. If federal funding pursuant to the Individuals with Disabilities Education Act, Part B and section 619 base flow-through allocation funds are inadequate at any time to pay one hundred percent of the allowable costs of such programs and transportation, the amount of the grant payments provided by the department shall be a pro rata amount as determined by the State Board of Education from appropriations for special education approved by the Legislature and based

on such allowable costs for all special education programs and transportation to children with disabilities who are less than five years of age.

012.03A6 The Nebraska Department of Education may make a supplemental payment to a school district or approved cooperative not able to achieve the Department's annually established Below Age Five funding threshold through a combination of IDEA base and enrollment and poverty flow-through allocations. Contingent upon available federal funds, this annual threshold will be at least the same percentage of funding as is available through state general funds for school age services for that year.

012.04 Allowable Costs

012.04A The allowable costs for special education services are restricted to the following items, which shall be documented and are subject to audit:

012.04A1 Salaries of special education personnel as per 92 NAC 51-010 and clerical personnel directly associated with special education programs;

012.04A2 School district or approved cooperative share of fringe benefits for the special education staff;

012.04A2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability, and unemployment insurance.

012.04A3 Inservice costs directly related to the special education programs, provided that;

012.04A3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with disabilities and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

012.04A3b Allowable costs include: presenter fees and expenses, mileage, board and room of staff to attend inservice programs, costs of substitutes for staff attending inservice programs, costs of inservice programs which directly assist regular educators in providing appropriate programs for children with verified disabilities in their classrooms, and costs of special education workshop attendance.

012.04A3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable expense.

012.04A4 Travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

012.04A4a Children attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services.

012.04A4b Children who are assigned to more than one attendance center to receive special education.

012.04A5 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process;

012.04A6 Costs of transporting children with disabilities which are authorized under Neb. Rev. Stat. §79-1129 and Section 014 are budgeted and claimed separately;

012.04A7 Instructional equipment including assistive technology devices and equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) or IFSP are allowable under this Chapter. The equipment, supplies, and publications shall be used by the child in association with the implementation of the child's IEP, IFSP or evaluation. This shall also include equipment, supplies, and publications used by staff when instructing children with verified disabilities; when evaluating children who are suspected of having disabilities; or when reevaluating children with verified disabilities. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include personal equipment and supplies or life support equipment and supplies. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment;

012.04A8 Those contracted special education services in which children with disabilities are served by a service provider whose special education programs and rates have been approved by the Commissioner of Education or designee;

012.04A9 Facility costs for Below Age Five Programs are limited to plant operations, maintenance, repairs, and lease costs. A total facility square footage cost may also be claimed for facilities owned by the school district or approved cooperative that are being utilized for ECSE programs. When determining square footage costs, expenditures for facility improvements must be excluded;

012.04A10 Utilities; and

012.04A11 Cost for support services as defined in Neb. Rev. Stat. §79-1125.01 and 92 NAC 51-003.59 and identified in 92 NAC 51-011.05 as the Flexible Funding Option.

012.04A11a Allowable support services must meet the requirements of 34 CFR 300.226 (coordinated early intervening services).

012.05 Program Cost Limitations

012.05A Supervision of early childhood special education programs is allowable as an expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable special education program costs, minus the cost of program supervision. Supervision of early childhood special education programs includes clerical costs associated with supervision of early childhood special education programs; also refer to Supervision of School Age Special Education programs contained in 92 NAC 51-011.02C.

012.05B The cost of a superintendent or a principal, hired for the purpose of supervising general education, shall not be included in costs for below age five and school age special education programs.

012.05C Any IDEA funds remaining after meeting Below Age Five obligations or at the option of the school district or approved cooperative, funds used for Coordinated Early Intervening Services (CEIS) pursuant to 92 NAC 51-012.07A, may be used by the school district or approved cooperative for other allowable costs associated with serving children with disabilities, ages 5 to 21.

012.06 IDEA Enrollment and Poverty Flow-through Allocation

012.06A As per federal regulations, the enrollment and poverty flow-through allocation is distributed to school districts or approved cooperatives as follows:

012.06A1 85% on the basis of the number of children enrolled in public and nonpublic elementary schools and secondary schools within the jurisdiction of the district; and

012.06A2 15% in accordance with the number of children living in poverty within the jurisdiction of the district as determined by the Nebraska Department of Education.

012.06B A combination of IDEA base and IDEA Enrollment and Poverty allocations will be used by school districts or approved cooperatives to achieve the annual threshold as specified in 92 NAC 51-012.03A6.

012.06C Funds may be used to supplement school age and below age five special education allowable costs not covered by state or federal payments (Refer to 92 NAC 51-012.04 and 012.05).

012.06C1 School districts or approved cooperatives shall complete an annual application and following approval by the Nebraska Department of Education, the school district or approved cooperative may request payment for reimbursement of allowable special education expenditures.

012.06C2 School districts or approved cooperatives may receive funding by submitting requests for payment to NDE supported with documentation.

012.06C3 Funds shall be used only to pay the excess cost of providing special education and related services to children with disabilities except for purposes specified in 92 NAC 51-012.07A, and shall be used to supplement State, local and other federal funds and not to supplant such funds.

012.06C3a For purposes of 92 NAC 51-012, school district or approved cooperative eligibility for IDEA funds is determined by annually calculating separately both an elementary and secondary average per pupil expenditure (APPE).

012.06C3b A school district or approved cooperative meets the IDEA excess cost requirement if it has spent at least a minimum average elementary or secondary amount (APPE) for the education of its children with disabilities before funds under Part B are used.

012.06C4 Minor building modifications are allowable costs if approved through the Enrollment/Poverty Supplemental application process.

012.06C5 When expenditures are for resources benefiting all children, costs attributed to IDEA shall be on a pro rata basis.

012.06C6 IDEA Enrollment and Poverty flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.06D An educational service unit, cooperative, or regional planning entity recognized by the State Board of Education pursuant to Neb. Rev. Stat. §79-1135 may receive grant funding if a school district or approved cooperative authorizes through a signed certification the release of all or a portion of the school district or approved cooperative IDEA allocation to said entity.

012.07 Special Considerations

012.07A Except as provided in 34 CFR 300.646 provision of IDEA Coordinated Early Intervening Services (CEIS) are voluntary for school districts and approved cooperatives receiving an IDEA allocation. Such services are limited to 15% of the school district or approved cooperative yearly IDEA allocations and are to be designed for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

012.07B When implementing IDEA CEIS, a school district may carry out activities that include:

012.07B1 Professional development (which may be provided by entities other than a school district or approved cooperative) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

012.07B2 Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

012.07C Each school district or approved cooperative that develops and maintains CEIS shall annually report the following information to the Department of Education:

012.07C1 The number of students served; and

012.07C2 The number of students served who subsequently receive special education and related services during the preceding two year period.

012.07D Payments for CEIS shall be contingent upon meeting the reporting requirements of 92 NAC 51-012.07C.

012.07D1 Payments for CEIS will be made according to 92 NAC 51-012.06C2.

012.07E Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under 92 NAC Rule 51.

012.07F Related services for children with verified disabilities are allowable if the services are listed in the IEP and are required to assist the child to benefit from his/her special education program.

012.07G Payments to a school district or approved cooperative contracting for special education services shall be limited to rates approved by the Commissioner of Education or designee.

012.07H Late submission of required forms will be subject to the procedures specified in 92 NAC 51-004.14.

012.08 Expenditures for Parentally-Placed Nonpublic School Children

012.08A To meet the requirement of 92 NAC 51-015.03C, each school district or approved cooperative must spend at least the following on providing special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities:

012.08A1 For children aged 3 through 21, an amount that is the same proportion of the school district's or approved cooperative's total subgrant under section 611(f) of the IDEA as the number of nonpublic school children with disabilities aged 3 through 21 who are enrolled by their parents in nonpublic including religious, elementary schools and secondary schools located in the school district served by the school district or approved cooperative is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

012.08A2 For children aged three through five, an amount that is the same proportion of the school district or approved cooperative's total subgrant under section 619(g) of the IDEA as the number of parentally-placed nonpublic school children with disabilities aged three through five who are enrolled by their parents in a nonpublic, including religious, elementary school located in the school district served by the school district or approved cooperative, is to the total number of children with disabilities in its jurisdiction aged three through five.

012.08A2a Children aged three through five are considered to be parentally-placed nonpublic school children with disabilities enrolled by their parents in nonpublic, including religious, elementary schools, if they are enrolled in a nonpublic school that meets the definition of elementary school in section 34 CFR 300.13.

012.08B If a school district or approved cooperative has not expended all of the funds described in 92 NAC 51-012.08A1 and 012.08A2 by the end of the fiscal year for which Congress appropriated the funds, the school district or approved cooperative must obligate the remaining funds for special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities during a carry-over period of one additional year.

012.08C In calculating the proportionate amount of Federal funds to be provided for parentally-placed nonpublic school children with disabilities, the school district or approved cooperative, after timely and meaningful consultation with representatives of nonpublic schools under 92 NAC 51-015.03D, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending nonpublic schools located in the school district or approved cooperative.

012.08D Each school district or approved cooperative must, after timely and meaningful consultation with representatives of parentally-placed nonpublic school children with disabilities (consistent with 92 NAC 51-015.03D) determine the number of parentally-placed nonpublic school children with disabilities attending nonpublic schools located in the school district or approved cooperative. The count is conducted on December 1 of each year.

012.08D1 The count must be used to determine the amount that the school district or approved cooperative must spend on providing special education and related services to parentally-placed nonpublic school children with disabilities in the next subsequent fiscal year.

012.08E State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed nonpublic school children with disabilities under this Chapter.

012.08F Eligible school districts and approved cooperatives shall submit a budget and narrative for serving nonpublic school children as part of an approved IDEA Consolidated Application.

012.08F1 Requests for payments may be submitted to NDE with supporting documentation.

012.09 Children with Disabilities Who Are Covered by Public Benefits or Insurance

012.09A A school district or approved cooperative may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this Chapter, as permitted under the Medicaid in Public Schools (MIPS) (Neb. Rev. Stat. §43-2511), except as provided in 92 NAC 51-012.09B.

012.09B With regard to services required to provide FAPE to an eligible child under Part B, the school district or approved cooperative:

012.09B1 May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under this Chapter;

012.09B2 May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this Chapter, but pursuant to 92 NAC 51-012.10C2 of this section, may pay the cost that the parents otherwise would be required to pay;

012.09B3 May not use a child's benefits under a public benefits or insurance program if that use would:

012.09B3a Decrease available lifetime coverage or any other insured benefit;

012.09B3b Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

012.09B3c Increase premiums or lead to the discontinuation of benefits or insurance; or

012.09B3d Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

012.10 Use of Part B Funds

012.10A If a school district or approved cooperative is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this Chapter, to ensure FAPE the school district or approved cooperative may use its Part B funds to pay for the service.

012.10B To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district or approved cooperative may use its Part B IDEA funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

012.10C Proceeds from public benefits or insurance or private insurance.

012.10C1 Proceeds from public benefits or insurance or private insurance will not be treated as program income for the purposes of 34 CFR 80.25.

012.10C2 If a school district or approved cooperative spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 92 NAC 51-012.01C.

012.11 Prior to accessing Public Benefits or Insurance or Private Insurance, school districts or approved cooperatives must meet requirements contained in 92 NAC 51-009.09A or 009.09B.

013 Contracted Programs

013.01 Special education programs and support services may be provided by contracting with another school district, approved cooperative, or with a Nebraska Department of Education provisionally approved service provider. Responsibility for compliance with state and federal regulations for programs for children with disabilities remains with the school district.

013.02 The school district of residence or approved cooperative shall be responsible for the development and maintenance of the IEP, and the participation in all IEP meetings and shall assure that IEP meetings are arranged with the contracted program and the parents. Such arrangements may include meetings with the contracted program, the school district, the approved cooperative, and the parent. Meetings may occur within the district, at the contracted program site or another site if more appropriate.

013.02A The parent, the school district, and a contracted program representative shall be involved in any decision about the IEP.

013.02B The expenditures for special education contractual services shall be considered for payment of allowable costs under the following conditions:

013.02B1 The services claimed by the school district or approved cooperative were provided by contracted programs whose service(s) and rate(s) were provisionally approved by the Nebraska Department of Education.

013.02C The school district or approved cooperative will be allowed a forty-five (45) calendar day grace period when entering into contracts with programs not provisionally approved by the Nebraska Department of Education. Within this forty-five day grace period a school district or approved cooperative is responsible for notifying the program of the application and approval requirements of the Nebraska Department of Education.

013.02C1 If the contracted program, other than a school district or approved cooperative fails to submit an application within the forty-five (45) calendar day grace period, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following the expiration of the grace period. If the agency's application for approval is denied by the Nebraska Department of Education, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following notification of the denial.

013.02C2 The cost of services provided by a contracted program which is not granted provisional approval by the Nebraska Department of Education will not be reimbursed.

013.02D The school district or approved cooperative and the provisionally approved contracted program shall enter into a contract which shall include but need not be limited to:

013.02D1 A description of the services to be provided;

013.02D2 Names of children to be served;

013.02D3 A cost schedule for the services; and

013.02D4 The Nebraska Department of Education service code and agency code for the service(s) provided.

013.02E The school district or approved cooperative shall have on file a signed copy of the contract.

013.02F The school district or approved cooperative shall monitor the progress of those children for whom they have contracted. For each child contracted for services, the school district or approved cooperative shall maintain within the school district or approved cooperative all applicable records as follows: a record of all referral information, notice to parents, parent notice and consent for initial evaluation, multidisciplinary evaluation team report, notification of IEP meeting, the individual education program, parent notice and consent for initial placement, notice of change of placement or program termination, notice of reevaluation, and other supportive data. School districts or approved cooperatives may elect to enter into agreements with provisionally approved contracted programs for the proper maintenance and protection of personally identifiable data on children with disabilities.

013.02G The school district or approved cooperative shall be liable for the payment of the educational costs for the placement of a child in a program not operated by the school district or approved cooperative when:

013.02G1 The school district or approved cooperative initiated the placement; or

013.02G2 The school district or approved cooperative has agreed to the placement; or

013.02G3 The school district or approved cooperative is party to a decision under 92 NAC 55 which requires such placement and which has not been appealed by the school district or approved cooperative; or

013.02G4 The school district or approved cooperative has been a party to litigation resulting in a court order requiring the placement.

013.03 Nebraska Department of Education Provisionally Approved Service Provider Responsibility

013.03A With the exception of inservice providers and consultants who provide special education training for parents and staff which directly assist in providing appropriate programs for children with verified disabilities, all service providers contracting with a school district or approved cooperative shall seek approval and obtain a provisionally approved rate, service code, and agency code for such services.

013.03B The school district or approved cooperative shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for each child with a disability.

013.03C Service providers who request reimbursable rates exceeding NDE established rates shall submit, on forms provided by the Nebraska Department of Education, the following:

013.03C1 Personnel and their qualifications;

013.03C2 A cost schedule for services (for allowable costs, see Sections 011 and 012);

013.03C3 A written description of services;

013.03C4 Separation of sectarian educational costs and non-sectarian educational costs, if applicable;

013.03C5 Separation of the cost of residential care costs from the cost of the educational program, if applicable;

013.03C6 Documentation of conformance with building codes and safety requirements, if applicable; and

013.03C7 For Educational Service Units, a final report of expenditures which is due within 45 days after the service provider's fiscal year end.

013.03D Service providers who request reimbursable rates at or below NDE established rates shall submit, electronically via the NDE website to the Nebraska Department of Education, the following:

013.03D1 Personnel and their qualifications;

013.03D2 A cost schedule for services;

013.03D3 A written description of services; and

013.03D4 Documentation of conformance with building codes and safety requirements, if applicable.

013.03E Service providers must have on file a copy of the child's current IEP.

013.03F Service providers shall provide reasonable notice to the school district or approved cooperative prior to termination of services by the provider.

013.03G Service providers shall not be considered provisionally approved until the Commissioner of Education or designee grants such approval.

013.03H Service providers shall be considered for provisional approval annually.

013.03I When residential care is required for a child to attend an education program, the education program must be approved by the Commissioner of Education or designee prior to approval for residential care.

014 Special Education Transportation

014.01 The board of education shall furnish one of the following types of services to children with disabilities who are residents of the school district:

014.01A Provide transportation for any child with a disability who is forced to leave the school district temporarily because of lack of educational services; and

014.01B Provide transportation within the school district for any child with a disability who is enrolled in a special education program of the district when either:

014.01B1 The child is required to attend a facility other than what would be the normal school of attendance of the child to receive appropriate special education services; or

014.01B2 The nature of the child's disability is such that special education transportation is required.

014.01C The board of education shall provide transportation for all children with disabilities birth to age five including children birth to age five who are wards of the court.

014.01D Transportation for Parentally-Placed Non-Public School Children

014.01D1 If necessary for the child to benefit from or participate in the services provided under this Chapter, a parentally-placed nonpublic school child with a disability must be provided transportation:

014.01D1a From the child's school or the child's home to a site other than the nonpublic school; and

014.01D1b From the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

014.01D2 School districts or approved cooperatives are not required to provide transportation from the child's home to the nonpublic school.

014.01D3 The cost of transportation may be included in calculating whether the school district or approved cooperative has met the requirement of 92 NAC 51-012.08.

014.02 Responsibility for Transportation

014.02A The board of education shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district under Neb. Rev. Stat. §79-1129 by:

014.02A1 Paying a parent for transporting his or her child for actual miles traveled and claimed; or

014.02A2 Operating vehicles for the purpose of transporting children with disabilities; or

014.02A3 Contracting for transportation services for children with disabilities; or

014.02A4 Purchasing services from a common carrier; or

014.02A5 Arranging for such other transportation as is proper and necessary to transport children with disabilities.

014.02B The board of education shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost.

014.02C The board of education shall not provide for the transportation expenses of children with a disability who are residents of the school districts under Neb. Rev. Stat. §79-1129 if such children are able to use regular transportation services provided by the district unless:

014.02C1 Alteration of the routes of such regular transportation is required to transport children with a disability; or

014.02C2 Alteration is required of the equipment or vehicles used in such regular transportation in order to accommodate children with a disability.

014.02D The board of education shall provide for expenses equal to the statutory amount for each mile or fraction thereof traveled between the place of residence and the program of attendance when a parent transports his or her child(ren) with a disability. (Refer to Neb. Rev. Stat. §§79-1129 and 81-1176.)

014.02E Except when a parent is transporting only his or her child, the board of education shall require that the driver and vehicle meet the standards required by 92 NAC 91 and 92.

014.02F For students with disabilities participating in the Option Enrollment Program under Neb. Rev. Stat. §§79-232 to 79-246, the transportation services included on the student's IEP shall be provided by the district from which the student optioned. The Department shall reimburse the district from which the student optioned for the cost of transportation in accordance with Section 014.

014.03 Allowable Expenses

014.03A The school district or approved cooperative shall provide for the transportation expenses of children with a disability transported by the parents of such children, upon receipt of claims submitted to the board of education by such parents. Such claims shall be documented and subject to audit. The claims shall:

014.03A1 State the names of the children transported, the dates they were transported, the mileage incurred in such transportation; and

014.03A2 Contain a statement that the claim is a true and correct report of mileage; and

014.03A3 Include the signature of the parent.

014.03B The school district or approved cooperative shall not be relieved of the obligation to provide transportation for an eligible child with a disability because of the inability or unwillingness of the child's parents to provide transportation. No eligible child with a disability may be denied or have limitations placed on the child's receipt of special education services required by an IEP as a result of the inability or unwillingness of parents to provide transportation.

014.03C The school district or approved cooperative shall provide for the expenses or the equivalent costs for transportation from the child's legal residence (the residence of the parent(s)) or the Nebraska Department of Education approved residential placement, to the child's program.

014.03D A school district or approved cooperative may apply to the Department of Health and Human Services for reimbursement of transportation costs for the school age student who was made a ward of the state or court prior to his or her arrival in that school district.

014.03E When the school district or approved cooperative provides for transportation expenses under Neb. Rev. Stat. §79-1129 for children with a disability who are residents of the school district by utilizing vehicles operated by the school district, it shall include those transportation expenses below which are directly related to the vehicles used to transport special education children:

014.03E1 Salaries and fixed charges of drivers and necessary aides;

014.03E2 Vehicle operational supplies;

014.03E3 Vehicle repairs and maintenance;

014.03E4 Vehicle lease costs;

014.03E5 Vehicle insurance related to the transportation of children with a disability;

014.03E6 Documented administrative expenses of those engaged or employed for the purpose of supervising the transportation of children with a

disability, their assistants, and clerical personnel but not including expenses for those engaged in general school or special education administration;

014.03E7 Such depreciation as is allowed in 92 NAC 51-014.04;

014.03E8 Those expenses attributable to an alteration of routes;

014.03E9 Those expenses attributable to alterations in equipment of vehicles, which must be depreciated; and

014.03E10 Facility expenses relating to the maintenance of vehicles used for transporting children with a disability. Transportation facility expense for purposes other than maintenance are not allowable reimbursable items. Maintenance includes such activities as repair, cleaning, greasing, fueling, and inspecting vehicles for safety. If a facility is used for purposes other than maintenance of vehicles used to transport children with a disability, expenses must be listed separately so that only those costs attributed to the maintenance of special education vehicles are included.

014.03F If income is derived from a transportation service provided under Neb. Rev. Stat. §79-1129 such income shall be used to offset expenses listed above to the extent of such income.

014.03G The Nebraska Department of Education shall allow a per mile cost for operating vehicles by using the categories of allowable expenses in 92 NAC 51-014.03 divided by the actual mileage the vehicle was driven for each fiscal year or the mileage rate provided in Neb. Rev. Stat. §81-1176. This procedure may be used in lieu of 92 NAC 51-014.03E.

014.03H The costs used must be adequately documented by the school district for review by the Nebraska Department of Education.

014.03I Detailed mileage logs must be maintained by the school district or approved cooperative and be available for review by the Nebraska Department of Education.

014.03J Undocumented expenses or mileage will not be allowed.

014.04 Depreciation

014.04A The school district or approved cooperative shall claim as a depreciation deduction a reasonable allowance for depreciation of:

014.04A1 Vehicles owned by the district, or portion of vehicles, or other capital assets owned by the district used in the transportation of children with a disability under Neb. Rev. Stat. §79-1129; and

014.04A2 Other capital expenditures required in the alteration of vehicles used in the transportation of children with a disability under Neb. Rev. Stat. §79-1129.

014.04B An allowance for depreciation shall be based on a reasonable useful life span of an item at the time of acquisition or for previous district owed vehicles, the fair market value of the item when placed into special education service so that the amount set aside each year for depreciation plus the estimated salvage value, will, at the end of the useful life of the item, equal the cost of the item.

014.04B1 It shall be presumed that the reasonable period of depreciation for a new conventional school bus is seven years and that of a new small vehicle is three years.

014.04B2 If any school district or approved cooperative determines that the periods of depreciation set forth above are not reasonable because of the type of vehicles in use, the school district or approved cooperative may request alternate periods of depreciation for such vehicles, along with supporting reasoning in an application to the Nebraska Department of Education.

014.04B3 Capital expenditures in excess of two thousand dollars ($2000) require a depreciation schedule approved by NDE.

014.04B4 The allowance for depreciation must be claimed in the fiscal year in which the vehicle was used.

014.04B5 When equipment is used for purposes other than for special education transportation, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

014.04C When a depreciable item is disposed of or used for a purpose other than the transportation of children with a disability under Neb. Rev. Stat. §79-1129, the fair market value of such item shall be considered its actual salvage value.

014.04C1 Any actual salvage in excess of estimated salvage value shall be set off against any payments due to the board under Neb. Rev. Stat. §79-1129 and 79-1144.

014.04C2 When the actual salvage value is less than the estimated salvage value, then an expense for such difference shall be allowable under 92 NAC 51-014.04B.

014.04C3 When vehicles are not disposed of in a cash sale, recognized retail book values, such as the Used Car Guide of the National Automobile Dealers Association shall be evidence of fair market value unless a board of education demonstrates that it is not appropriate to use such recognized book values on a particular vehicle because of the condition or type of the vehicle in question.

014.04C4 A depreciation schedule shall be maintained by the district or approved cooperative as long as they own the vehicle.

014.05 Other Conditions

014.05A The fiscal year for school age and early childhood special education (Below Age Five) transportation shall be from September 1 to August 31.

014.05B Based on claim forms submitted reflecting the allowable costs of transporting children with disabilities, the Nebraska Department of Education will reimburse each school district or approved cooperative a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature. For early childhood special education (Below Age Five) transportation, refer to 92 NAC 51-014.05H. Transportation claim forms shall be submitted on or before September 30 of each year according to the provisions of 92 NAC 51-011.04C3 and 011.04C4. Forms are available at the Nebraska Department of Education.

014.05C Reimbursement to a school district or approved cooperative whose Special Education Transportation Final Claim Form is submitted to the Nebraska Department of Education after the due date shall be subject to the procedures specified in 92 NAC 51-004.14.

014.05D All transportation claims shall be documented and are subject to audit.

014.05E For payment for costs associated with the transportation of children below the age of five with a disability who are wards of the court, refer to 92 NAC 51-014.05H.

014.05F Supplementary amendments to any Special Education School Age Transportation Final Claim Form previously approved by the Nebraska Department of Education may be submitted to the Nebraska Department of Education for review and approval within three years of the original due date. Approved

amendments may be submitted by the Nebraska Department of Education to the Legislature for consideration of a supplemental appropriation.

014.05G Payments authorized by Neb. Rev. Stat. §79-1144 shall be made only to a school district or approved cooperative.

014.05H IDEA Base flow-through allocation (92 NAC 51-012.02) and the IDEA Enrollment and Poverty Allocation (92 NAC 51-012.06) are to be used to fund costs for transporting children with disabilities below the age of five.

014.05I Expenditure of IDEA Allocations shall be in accordance with 92 NAC 51-012.06C3, 012.06C4, and 012.06C5.

015 Children with Disabilities Attending Nonpublic Schools

015.01 Children Placed In or Referred To a Nonpublic School or Facility by the School District or Approved Cooperative As a Means of Providing Special Education and Related Services

015.01A School districts or approved cooperatives shall ensure that a child with a disability who is placed in or referred to a nonpublic school or facility by a school district:

015.01A1 Is provided special education and related services in conformance with an IEP that meets the requirements of Section 007 at no cost to the parents;

015.01A2 Is provided an education that meets the standards that apply to education provided by the school district or approved cooperative including the requirements of this Chapter except 92 NAC 51-003.62; and

015.01A3 Has all of the rights of a child with a disability who is served by a school district or approved cooperative.

015.01B The school district or approved cooperative is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising an IEP for a child with a verified disability.

015.01B1 Before a school district or approved cooperative places a child with a disability in, or refers a child to, a nonpublic school or facility, the school district or approved cooperative shall initiate and conduct a meeting to develop an IEP for the child in accordance with Section 007.

015.01B2 After a child with a disability enters a nonpublic school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the school district or approved cooperative.

015.01B3 If the nonpublic school or facility initiates and conducts these meetings, the school district or approved cooperative shall ensure that the parents and nonpublic representative:

015.01B3a Are involved in any decision about the child's IEP; and

015.01B3b Agree to any proposed changes in the IEP before those changes are implemented.

015.02 Children Placed In a Nonpublic School by Parents As a Means of Obtaining Special Education and Related Services; FAPE is At Issue

015.02A This Chapter does not require a school district or approved cooperative to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district or approved cooperative made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility as a means of obtaining special education and related services. However, the school district or approved cooperative shall include that child in the population whose needs are addressed consistent with 92 NAC 51-015.03.

015.02B Disagreements between a parent and a school district or approved cooperative regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures of 92 NAC 55.

015.02B1 If the parents of a child with a disability, who previously received special education and related services under the authority of the school district or approved cooperative, enroll the child in a nonpublic preschool, elementary or secondary school as a means of obtaining special education and related services without the consent of or referral by the school district or approved cooperative, a court or a hearing officer may require the school district or approved cooperative to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district or approved cooperative had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

015.02B1a A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards

that apply to education provided by the school district or approved cooperative.

015.02C The cost of reimbursement described in 92 NAC 51-015.02B1 may be reduced or denied if:

015.02C1 At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district or approved cooperative to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or

015.02C2 At least 10 business days (including any holidays that occur on a business day), prior to the removal of the child from the public school or approved cooperative, the parents did not give written notice to the school district of the information described in 92 NAC 51-015.02C1; or

015.02C3 If prior to the parents' removal of the child from the public school, the school district or approved cooperative informed the parents, through the notice requirements described in 92 NAC 51-009.05, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

015.02C4 Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

015.02D Notwithstanding the notice requirement in 92 NAC 51-015.02C1 and 015.02C2, the cost of reimbursement:

015.02D1 Must not be reduced or denied for failure to provide the notice if:

015.02D1a The school district or approved cooperative prevented the parents from providing the notice;

015.02D1b The parents had not received notice, pursuant to 92 NAC 51-009.06 of the notice requirement in 92 NAC 51-015.02C1 and 015.02C2; or

015.02D1c Compliance with 92 NAC 51-015.02C1 and 015.02C2 would likely result in physical harm to the child; and

015.02D2 May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

015.02D2a The parents are not literate or cannot write in English; or

015.02D2b Compliance with paragraph 92 NAC 51-015.02C1 and 015.02C2 of this section would likely result in serious emotional harm to the child.

015.03 Children Enrolled In a Nonpublic School by Parents If FAPE Is Not At Issue

015.03A Parentally-placed nonpublic school children with disabilities means children with disabilities enrolled by their parents in nonpublic, including religious schools or facilities that meet the definition of elementary or secondary school, other than children with disabilities covered in 92 NAC 51-015.01 and 015.02.

015.03A1 For purposes of providing equitable services utilizing IDEA funds described in 92 NAC 51-012.08:

015.03A1a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14, or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades.

015.03A1b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth designated by the school as a secondary grade.

015.03A2 For purposes of providing a Free Appropriate Public Education:

015.03A2a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

015.03A2b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth des-

ignated by the school as a secondary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

015.03B Child find for Parentally-placed Nonpublic School Children with Disabilities

015.03B1 Each school district or approved cooperative must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district or approved cooperative, in accordance with 92 NAC 51-015.03B2 through 015.03B5.

015.03B2 The child find process must be designed to ensure:

015.03B2a The equitable participation of parentally-placed nonpublic school children; and

015.03B2b An accurate count of those children.

015.03B3 In carrying out the child find requirements, the school district or approved cooperative must undertake activities similar to the activities undertaken for public school children.

015.03B4 The cost of carrying out the child find requirements in this subsection, including individual evaluations, may not be considered in determining if a school district or approved cooperative has met its obligations under 92 NAC 51-012.08.

015.03B5 The child find process must be completed in a time period comparable to that for children attending public schools in the school district or approved cooperative consistent with 92 NAC 51-006.02.

015.03B6 Each school district or approved cooperative, in which one or more nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this subsection, include parentally-placed nonpublic school children who reside in a State other than Nebraska.

015.03C Provision of Services for Parentally-placed Nonpublic School Children

015.03C1 To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in nonpublic including religious elementary schools and secondary schools located in the school district or approved cooperative, provision must be made for the participation

of those children in the program assisted or carried out under Part B of the IDEA as amended in 2004 by providing them with special education and related services.

015.03C1a Parentally-placed nonpublic school children with disabilities are eligible for the provision of a free appropriate public education from the school district or approved cooperative in which they reside. Services available under such circumstances are referred to as a Free Appropriate Public Education (FAPE).

015.03C1a(1) An IEP shall be developed and implemented in accordance with 92 NAC 51-007 for each resident nonpublic school child receiving FAPE.

015.03C1b Parentally-placed nonpublic school children with disabilities who are attending a nonpublic school located outside of their district of residence may receive special education and related services (referred to as equitable services) from the district in which the nonpublic school is located or a free appropriate public education (FAPE) from the district in which they reside, but not both. The decision on whether to receive equitable services or FAPE is at the discretion of the child's parent.

015.03C1b(1) In accordance with 92 NAC 51-015.03C1 and 92 NAC 51-015.03G through 015.03I, an equitable services plan must be developed and implemented for each nonresident nonpublic school child with a disability who has been designated by the school district or approved cooperative in which the nonpublic school is located to receive equitable services.

015.03C2 Each school district or approved cooperative must maintain in its records, and provide to the Nebraska Department of Education the following information related to parentally-placed nonpublic school children attending nonpublic schools located in the school district or approved cooperative:

015.03C2a The number of children evaluated;

015.03C2b The number of children determined to be children with disabilities; and

015.03C2c The number of children served.

015.03C3 Special education and related services (FAPE or equitable services) provided to parentally-placed nonpublic school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

015.03D Consultation

015.03D1 To ensure timely and meaningful consultation, a school district or approved cooperative must consult with representatives of nonpublic schools located in the school district or approved cooperative and representatives of parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services (FAPE and equitable services) for the children regarding the following:

015.03D1a The child find process, including:

015.03D1a(1) How parentally-placed nonpublic school children suspected of having a disability can participate equitably; and

015.03D1a(2) How parents, teachers, and nonpublic school officials will be informed of the process.

015.03D1b The determination of the proportionate share of Federal funds available to serve parentally-placed nonpublic school children with disabilities available under 34 CFR 300.133(C), including the determination of how the proportionate share of those funds was calculated.

015.03D1c The consultation process among the school district or approved cooperative, nonpublic school officials, and representatives of parents of parentally-placed nonpublic school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services (FAPE or equitable services).

015.03D1d How, where, and by whom special education and related services (FAPE or equitable services) will be provided for parentally-placed nonpublic school children with disabilities, including a discussion of:

015.03D1d(1) The types of services, including direct services and alternate service delivery mechanisms; and

015.03D1d(2) How special education and related services funded by the proportionate amount of federal funds will be apportioned if such funds are insufficient to serve all parentally-placed nonpublic school children; and

015.03D1d(3) How and when those decisions will be made.

015.03D1e If the school district or approved cooperative disagrees with the views of the nonpublic school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district or approved cooperative will provide to the nonpublic school officials a written explanation of the reasons why the school district or approved cooperative chose not to provide services directly or through a contract.

015.03E Written Affirmation

015.03E1 When timely and meaningful consultation, as required by 92 NAC 51-015.03D has occurred, the school district or approved cooperative must obtain a written affirmation signed by the representatives of participating nonpublic schools.

015.03E2 If the representatives do not provide the affirmation within a reasonable period of time, the school district or approved cooperative must forward the documentation of the consultation process to the Nebraska Department of Education.

015.03F Complaints

015.03F1 A nonpublic school official has the right to submit a complaint to the Nebraska Department of Education that the school district or approved cooperative:

015.03F1a Did not engage in consultation that was meaningful and timely; or

015.03F1b Did not give due consideration to the views of the nonpublic school official.

015.03F2 If the nonpublic school official wishes to submit a complaint, the official must provide to the Nebraska Department of Education the basis of the noncompliance by the school district or approved cooperative with the applicable school provisions in this Chapter; and

015.03F2a The school district or approved cooperative must forward the appropriate documentation to the Nebraska Department of Education. If the nonpublic school official is dissatisfied with the decision of the Nebraska Department of Education, the official may submit a complaint to the United States Secretary of Education by providing the information on noncompliance described in 92 NAC 51-015.03F2. The Nebraska Department of Education must forward the appropriate documentation to the United States Secretary of Education.

015.03G Equitable Services for Nonresident Nonpublic School Children Determined

015.03G1 No parentally-placed nonresident nonpublic school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

015.03G2 Decisions about the equitable services that will be provided to parentally-placed nonresident nonpublic school children with disabilities must be made in accordance with 92 NAC 51-015.03G3 and 015.03D1c.

015.03G2a The school district or approved cooperative must make the final decisions with respect to the equitable services to be provided to eligible parentally-placed nonresident nonpublic school children with disabilities.

015.03G3 If a nonresident nonpublic school child with a disability is enrolled in a religious or other nonpublic school by the child's parents and will receive equitable services from a school district or approved cooperative, the school district or approved cooperative must:

015.03G3a Initiate and conduct meetings to develop, review, and revise an equitable services plan for the child, in accordance with 92 NAC 51-015.03H; and

015.03G3b Ensure that a representative of the religious or other nonpublic school attends each meeting. If the representative cannot attend, the school district or approved cooperative shall use other methods to ensure participation by the religious or other nonpublic school, including individual or conference telephone calls.

015.03H Equitable Services Provided to Nonresident Nonpublic School Children with Disabilities

015.03H1 The equitable services provided to parentally-placed nonresident nonpublic school children with disabilities must be provided by personnel

meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to parentally-placed nonresident nonpublic school children with disabilities do not have to meet the special education teacher requirements of 92 NAC 51-003.62.

015.03H2 Parentally-placed nonresident nonpublic school children with disabilities may receive a different amount of services than resident public and nonpublic school children with disabilities.

015.03H3 Each parentally-placed nonresident nonpublic school child with a disability who has been designated to receive equitable services under 92 NAC 51-015.03C1b must have an equitable services plan that describes the specific special education and related services that the school district or approved cooperative will provide to the child in light of the services that the school district or approved cooperative has determined, through the process described in 92 NAC 51-015.03C and 015.03G, it will make available to parentally-placed nonresident nonpublic school children with disabilities.

015.03H4 The equitable services plan must, to the extent appropriate:

015.03H4a Meet the requirements of 92 NAC 51-007.07A or for a child ages three through five, meet the requirements of 92 NAC 51-007.02A1 with respect to the services provided; and

015.03H4b Be developed, reviewed, and revised consistent with 92 NAC 51-007.

015.03H5 Equitable services must be provided:

015.03H5a By employees of a public school district or approved cooperative; or

015.03H5b Through contract by the school district or approved cooperative with an individual, association, agency, organization, or other entity.

015.03I Location of Services and Transportation

015.03I1 Services (equitable or FAPE) to parentally-placed nonpublic school children with disabilities may be provided on the premises of nonpublic, including religious, schools, to the extent consistent with law.

015.03I1a A school district or approved cooperative may lease a classroom in a nonpublic school building. If properly drafted, the lease transforms the classroom into a public school classroom during the times covered by the lease. The board of education of a public school district may offer the special education programs enumerated in Neb. Rev. Stat. §79-1127 in a leased classroom in a nonpublic school building. It does not, however, have an unqualified legal duty to do so.

015.03J Due Process and State Complaints

015.03J1 Except as provided in 92 NAC 51-015.03J2, the procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12, 009.13, 009.14 and 92 NAC 55 do not apply to complaints that a school district or approved cooperative has failed to meet the requirements of 92 NAC 51-015.03C1 through 015.03I and 92 NAC 51-014.01D and 012.08 including the provision of services indicated on the child's equitable services plan.

015.03J2 The procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12 through 009.14 and 92 NAC 55 apply to complaints that a school district or approved cooperative has failed to meet the child find requirements in 92 NAC 015.03B1, including the requirements in 92 NAC 51-009.08 and 006.

015.03J3 Any due process complaint regarding the child find requirements (as described in 92 NAC 51-015.03J2) must be served on the school district or approved cooperative in which the nonpublic school is located and filed with the Nebraska Department of Education.

015.03J4 Any complaint that the Nebraska Department of Education or school district or approved cooperative has failed to meet the requirements in 92 NAC 51-015.03C through 015.03E and 012.08 and 92 NAC 51-015.03G through 015.07 must be filed in accordance with the procedures described in 92 NAC 51-009.11.

015.03J5 A complaint filed by a nonpublic school official under 92 NAC 51-015.03F1 must be filed with the Nebraska Department of Education in accordance with the procedures in 92 NAC 51-015.03F2.

015.04 A school district or approved cooperative may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:

015.04A The classes are at the same site; and

015.04B The classes include children enrolled in public schools and children enrolled in nonpublic schools.

015.05 A school district or approved cooperative may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

015.05A A school district or approved cooperative shall use the special education funds provided to meet the special education and related services (FAPE or equitable services) needs of parentally-placed nonpublic school children with disabilities but not for meeting:

015.05A1 The needs of a nonpublic school; or

015.05A2 The general needs of the children enrolled in a nonpublic school.

015.06 A school district or approved cooperative may use special education funds to make public school personnel available in other than public facilities:

015.06A To the extent necessary to provide services designed for parentally-placed nonpublic school children with disabilities; and

015.06B If those services are not normally provided by the nonpublic school.

015.07 A school district or approved cooperative may use special education funds to pay for the services of an employee of a nonpublic school to provide special education and related services (FAPE or equitable services) if:

015.07A The employee performs the services outside of his or her regular hours of duty; and

015.07B The employee performs the services under public supervision and control.

015.08 A school district or approved cooperative may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.

015.08A The school district or approved cooperative shall ensure that the equipment and supplies placed in a nonpublic school:

015.08A1 Are used only for the purpose of providing special education and related services; and

015.08A2 Can be removed from the nonpublic school without remodeling the nonpublic school facilities.

015.08B The school district or approved cooperative shall remove equipment or supplies from a nonpublic school if:

015.08B1 The equipment and supplies are no longer needed for the purpose of providing special education and related services; or

015.08B2 Removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.

015.08C No special education funds may be used for repairs, minor remodeling, or the construction of nonpublic school facilities.

015.09 A school district or approved cooperative must control and administer the funds used to provide special education and related services under 92 NAC 51-015.03G through 92 NAC 51-015.03I, and hold title to and administer materials, equipment, and property purchased with those funds for those uses and purposes provided in this Chapter.

016 Disciplinary Removal of Children with Disabilities

016.01 Change of Placement for Disciplinary Removals

016.01A For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:

016.01A1 The removal is for more than 10 consecutive school days; or

016.01A2 The child is subjected to a series of removals that constitute a pattern:

016.01A2a Because the series of removals total more than 10 school days in a school year;

016.01A2b Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and

016.01A2c Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

016.01B The school district or approved cooperative determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

016.01B1 This determination is subject to review through due process and judicial proceedings.

016.02 Authority of School Personnel

016.02A School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of subsection 016.02 of this Chapter, is appropriate for a child with a disability who violates a code of student conduct.

016.02B School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51-016.01).

016.02B1 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district or approved cooperative must provide services to the extent required under 92 NAC 51-016.02D.

016.02C For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.

016.02D A child with a disability who is removed from the child's current placement pursuant to 92 NAC 51-016.02C or 016.02G must:

016.02D1 Continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

016.02D2 Receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

016.02D3 The services described in 92 NAC 51-016.02D1, 016.02D2, 016.02D4, and 016.02D5 may be provided in an interim alternative educational setting.

016.02D4 A school district or approved cooperative is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less

in that school year, if it provides services to a child without disabilities who is similarly removed.

016.02D5 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

016.02D6 If the removal is a change of placement under 92 NAC 51-016.01, the child's IEP team determines appropriate services under 92 NAC 51-016.02D.

016.02E Manifestation Determination

016.02E1 Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

016.02E1a If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or

016.02E1b If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.

016.02E2 The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.

016.02E3 If the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.

016.02F If the school district or approved cooperative, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:

016.02F1 Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

016.02F2 Except as provided in 92 NAC 51-016.02G, return the child to the placement from which the child was removed, unless the parent and the school district or approved cooperative agree to a change of placement as part of the modification of the behavioral intervention plan.

016.02G School personnel may remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

016.02G1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative;

016.02G2 Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative; or

016.02G3 Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative.

016.02H On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative shall notify the parents of that decision, and provide the parents the procedural safeguards in 92 NAC 51-009.

016.03 The interim alternative educational setting in 92 NAC 51-016.02C, 016.02D and

016.02G shall be determined by the child's IEP team.

016.04 Appeals Regarding Placement in an Alternative Education Setting

016.04A The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a school district or approved cooperative that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing by filing a petition pursuant to 92 NAC 55.

016.04B A hearing officer shall hear and make a determination regarding an appeal pursuant to 92 NAC 55 requested under 92 NAC 51-016.04A.

016.04C In making the determination under 92 NAC 51-016.04B, the hearing officer may:

016.04C1 Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 92 NAC 51-016.02 or that the child's behavior was a manifestation of the child's disability; or

016.04C2 Order a change in placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

016.04C3 The procedures under 92 NAC 51-016.04 may be repeated, if the school district or approved cooperative believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

016.04D Whenever a hearing is requested under 92 NAC 51-016.04A, the parents or the school district or approved cooperative involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements in 92 NAC 55, except as provided in 92 NAC 51-016.04D1 through 016.04D2b.

016.04D1 The Nebraska Department of Education is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

016.04D2 Unless the parents and school district or approved cooperative agree in writing to waive the resolution meeting described in 92 NAC 51-016.04D2a, or agree to use the mediation process described in 92 NAC 51-009.12 –

016.04D2a A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

016.04D2b The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

016.04D3 The decisions on expedited due process hearings are appealable consistent with 92 NAC 55.

016.05 When an appeal under 92 NAC 51-016.04 has been requested by either the parent or the school district or approved cooperative:

016.05A The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 92 NAC 51-016.02C, whichever occurs first, unless the parent and the school district or approved cooperative agree otherwise.

016.06 Protections for Children Not Yet Eligible for Special Education and Related Services

016.06A A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct of the school district or approved cooperative, may assert any of the protections provided for in this Chapter if the school district or approved cooperative had knowledge (as determined in accordance with 92 NAC 51-016.06B) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

016.06B A school district or approved cooperative shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

016.06B1 The parent of the child has expressed concern in writing to supervisory or administrative personnel of the school district or approved cooperative, or a teacher of the child, that the child is in need of special education and related services;

016.06B2 The parent of the child requested an evaluation of the child pursuant to 92 NAC 51-006.02B1; or

016.06B3 The teacher of the child or other personnel of the school district or approved cooperative expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the school district or approved cooperative or to other supervisory personnel of the school district or approved cooperative.

016.06C A school district or approved cooperative shall not be deemed to have the knowledge that the child is a child with a disability if:

016.06C1 The parent of the child has not allowed an evaluation of the child pursuant to 92 NAC 51-006; or

016.06C2 The parent of the child has refused services under this Chapter; or

016.06C3 The child has been evaluated pursuant to 92 NAC 51-006 and was determined to not be a child with a disability under this Chapter.

016.06D Conditions that Apply if No Basis of Knowledge

016.06D1 If a school district or approved cooperative does not have knowledge that a child is a child with a disability (in accordance with 92 NAC 51-016.06B or 016.06C) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with 92 NAC 51-016.06D2.

016.06D2 If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 92 NAC 51-016.02, the evaluation shall be conducted in an expedited manner.

016.06D2a Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

016.06D2b If a child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district or approved cooperative and information provided by the parents, the school district or approved cooperative must provide special education and related services in accordance with this Chapter, including the requirements of 92 NAC 51-016.

016.07 Referral to and Action by Law Enforcement and Judicial Authorities

016.07A Nothing in this Chapter shall be construed to prohibit school districts or approved cooperatives from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

016.07B A school district or approved cooperative reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the school district or approved cooperative reports the crime.

016.07C A school district or approved cooperative reporting a crime under 92 NAC 51-016.07 may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Education Rights and Privacy Act (FERPA).

Appendix A

Excerpts from the Individuals with Disabilities Education Act 2004 (IDEA 2004)

602(4) CORE ACADEMIC SUBJECTS. – The term 'core academic subjects' has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.

(Note: Section 9101 of the Elementary and Secondary Education Act of 1965 defines "core academic subjects" as follows:

Core Academic Subjects means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history and geography.)

602(10) HIGHLY QUALIFIED. –

(A) In GENERAL – For any special education teacher, has the meaning given the term "high qualified" in Section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also

(i) includes the requirements described in Subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of Section 9101 of such Act by meeting the requirements of Subparagraph (C) and (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS –

When used with respect to any public elementary school or secondary school special education teacher teaching in the State, such term means that –

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher; except that

when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS. – When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either—

(iii) meet the applicable requirements of Section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(iv) meet the requirements of Subparagraph (B) or (C) of Section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS – When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either –

(i) meet the applicable requirements of Section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the

teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than two years after the date of employment.

(E) RULE OF CONSTRUCTION – Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA – A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

602(18) LIMITED ENGLISH PROFICIENT. – The term 'limited English proficient' has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.

(Note: Section 9101 of the Elementary and Secondary Education Act of 1965 defines "Limited English Proficient" as follows:

The term "limited English proficient", when used with respect to an individual, means an individual –

(A) who is aged 3 through 21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

(C) (i) who was not born in the United States or whose native language is a language other than English

(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual –

(i) the ability to meet the State's proficient level of achievement on State assessments described in Section 1111(b)(3);

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.)

612(a)(16) PARTICIPATION IN ASSESSMENTS. –

(A) In General. – All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under Section 1111 of the Elementary and Secondary Education Act of 1965 with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

612(a)(16)(C)(ii)(II) If the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

1413(a)(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES. – The local education agency shall cooperate in the Secretary's efforts under Section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

614(a)(5)(A) SPECIAL RULE FOR ELIGIBILITY DETERMINATION. – In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is –

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in Section 1208(3) of the Elementary and Secondary Education Act of 1965;

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION

CHAPTER 51 - REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS

001 Declaration of Responsibility

Neb. Rev. Stat. §79-1127 declares, "The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs."

002 Statutory Authority

This Chapter is adopted pursuant to the statutory authority vested in the Nebraska Department of Education in Neb. Rev. Stat. §79-1160 which declares, "The State Department of Education shall adopt, promulgate and publish rules and regulations necessary to carry out the Special Education Act and in Neb. Rev. Stat. §§79-318 and 79-319.

003 Definition of Terms

003.01 ***Adjusted average per pupil cost*** **(AAPC)** of the preceding year means the amount computed by dividing the total instructional expenditure, excluding special education expenditures, by the preceding year's average daily membership as reported in the annual finance report. The costs of sectarian instruction shall not be included in determining the adjusted average per pupil cost of the preceding year and the computation shall be subject to audit by appropriate state agencies. (See Section 011.)

003.02 ***Assistive technology device*** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

003.03 ***Assistive technology service*** means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices

by children with a disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with a disability, or if appropriate, that child's family; and training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child with a disability.

003.04 ***At no cost*** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled children or their parents as a part of the regular education program.

003.05 ***Below age five*** means those children who have not reached their fifth birthday on or before July 31 of the current school year.

003.06 ***Categorical program*** means a special education program setting in which services are provided to children with the same disability.

003.07 ***Child find*** means that all children with disabilities residing in the State, including children with disabilities who are homeless children, or are wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services (See Section 006).

003.08 ***Child with a disability*** means a child who has been verified pursuant to Section 006 as a child with autism, a behavior disorder (herein referred to as emotional disturbance), deaf-blindness, a developmental delay, a hearing impairment including deafness, an intellectual disability, multiple impairment, an orthopedic impairment, an other health impairment, a specific learning disability, a speech-language impairment, a traumatic brain injury or a visual impairment including blindness, who because of this impairment needs special education and related services. If, under 92 NAC 51-003.56, it is determined, through an appropriate evaluation under Section 006, that a child has one of the disabilities identified above, but only needs a

related service and not special education, the child is not a child with a disability under this Chapter. If the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

003.09 ***Consent*** means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; that the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; that the consent includes a description of the proposed activity and a list of records (if any) which will be released and to whom they will be released; and the parent understands that the granting of consent is voluntary and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the school district or approved cooperative is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

003.10 ***Controlled substance*** means a drug or other substance identified under schedules I, II, III, IV or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

003.11 ***Cooperative*** means two or more school districts or an Educational Service Unit (ESU) approved by the Nebraska Department of Education to jointly perform special education functions, including receipt of special education payments.

003.12 ***Core Academic Subjects*** has the meaning given the term in Section 602(4) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.13 ***Day*** means calendar day unless otherwise indicated as business day or school day;

003.13A ***Business day*** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day) as in 92 NAC 51-015.02C2.

003.13B ***School day*** means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

003.14 ***Destruction*** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

003.15 ***Early childhood special education (ECSE) programs*** means special education programs and related services designed to serve children below age five with verified disabilities.

003.16 ***Early Intervening Services*** means the development and implementation of coordinated, early intervening services, which may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade 3) who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

003.17 ***Education*** records means those records that are directly related to a child which are maintained by an educational agency or institution or by a party acting for the agency or institution. This term parallels the definition contained in the regulations implementing the Family Educational Rights and Privacy Act (FERPA).

003.18 Educational sign language interpreter means a person who provides interpreter services for individuals with deafness or hearing impairments for special education evaluations or services pursuant to IEPs; and who is qualified to facilitate communication between people who do not share a common language or mode of communication.

003.19 ***Equipment*** means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment, and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

003.20 ***Equitable*** services plan means a written statement that describes the special education and related services the school district or approved cooperative will provide to a parentally-placed non-resident child with a disability enrolled in a nonpublic school in a district other than the district of residence who has been designated to receive services, including the location of the services and any transportation necessary consistent with Section 015 of this Chapter, and is developed and implemented in accordance with Section 015 of this Chapter.

003.21 ***Evaluation*** means procedures used in accordance with 92 NAC 51-006 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

003.22 ***Excess*** costs means the difference between: (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of children (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the school district of each child for the preceding year.

003.23 ***Extended school year services*** means special education and related services that: are provided to a child with a disability, beyond the normal school year of the school district or approved cooperative, in accordance with the child's IEP, at no cost to the parents of the child, and meet the requirements of 92 NAC 51.

003.24 ***Free appropriate public education or FAPE*** means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007.

003.25 ***Full time equivalency (FTE)*** means the amount of time an individual staff member spends in his or her position assignment as it relates to the total time in the work week defined for that position by each school district.

003.26 ***Functional behavioral assessment*** means the process of gathering information that may be used to maximize the effectiveness and efficiency of behavior support (direct observation must be

included). It involves a description of the problem behavior, the identification of antecedents which occasion the behavior and consequences which maintain it, the function the behavior serves (e.g., attention, communication, task avoidance), and the selection of alternative behaviors which will provide the same function.

003.27 ***Homeless children*** has the meaning given the term homeless children and youth in Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C.11434a).

003.28 ***Illegal drug*** means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provisions of federal law.

003.29 ***Include*** means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

003.30 ***Independent educational evaluation*** means an evaluation conducted by a qualified examiner who is not employed by the school district or approved cooperative responsible for the education of the child in question.

003.31 ***Individualized education program (IEP)*** means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education.

003.32 ***Individualized education program team or IEP team*** means a group of individuals described in Section 007 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

003.33 ***Individualized Family Service Plan (IFSP)*** means a written plan for providing early intervention services to a child with a disability age birth through the school year in which the child reaches age 3 and the child's family that is developed and implemented in accordance with 92 NAC 52.

003.34 ***Level I Special Education Services*** means those services provided to children who require an aggregate of not more than three (3) hours of such services per week. Level I special education services

may be provided for or contracted for and shall include all administrative, diagnostic, consultative, vocational adjustment counselor services and support services. Administration, diagnostic services, and special education staff consultation with other staff shall not be included in the computation of hours of services provided to a child each week.

003.35 ***Level I and Level II Combination Special Education Services*** means those special education programs which serve both Level I and Level II students in a combined program.

003.36 ***Level II Special Education Services*** means those special education and related services which are provided for a period of time exceeding an aggregate of three hours per week.

003.37 ***Level III Special Education Contractual Services*** means those special education and related services provided in an educational setting not operated by the school district or approved cooperative whose rates are approved by the Nebraska Department of Education. This shall mean special education and related services provided for a period of time exceeding an aggregate of three hours per week.

003.38 ***Life support equipment*** means equipment used to maintain or sustain life functions.

003.39 ***Limited English Proficient*** has the meaning given the term in Section 602(18) in the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.40 ***Multicategorical program*** means a special education program setting which provides services to any combination of categories of children with disabilities.

003.41 ***Multidisciplinary evaluation team (MDT)*** means a group of qualified professionals and the parent whose responsibility is to evaluate the abilities and needs of a child referred for evaluation and to determine whether or not the child meets the definition of a child with a disability.

003.42 ***Native language***, (when used with respect to an individual of limited English proficiency), means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except in all direct contact with a child (including

evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

003.43 ***Notice*** means written information provided to the parent of a child with a disability a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.

003.44 ***Parent*** means a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 92 NAC 51-009.10B. The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. However, if a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this subsection.

003.45 ***Personal equipment and supplies*** means items necessary for daily life activities occurring outside the requirement of the IEP which are generally expected to be the responsibility of parents.

003.46 ***Personally identifiable*** means information that contains the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or NDE student ID; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

003.47 ***Public agency*** includes the Nebraska Department of Education, school districts and approved cooperatives and any other

political subdivisions of the state that are responsible for providing education to children with disabilities.

003.48 ***Referral*** means the submission of a request by a parent, school personnel or approved agency for an individual evaluation of a child suspected of having a disability.

003.49 ***Related services*** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. Related services do not include a medical device that is surgically implanted (including cochlear implants), the optimization of that device□s functioning (e.g., mapping), maintenance of that device, or the replacement of that device. This definition does not limit the right of a child with a surgically planted device (e.g., cochlear implant) to receive related services as listed in this definition that are determined by the IEP team to be necessary for the child to receive FAPE or limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

003.50 ***Residential care*** means food and lodging and any other related expenses which are not part of the education program, but such care shall not include expenditures for medical or dental services. (See 92 NAC 53.)

003.51 ***School age programs*** means special education programs and related services designed to serve children with verified disabilities from age five through the school year in which the children reach age twenty-one. Children who have reached their fifth birthday prior to July 31 shall be considered school age.

003.52 ***School district*** means a public school district or a cooperative

approved as a Nebraska Department of Education special education service provider.

003.53 ***Serious bodily injury*** means bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

003.54 ***Service agency*** means the school district or approved cooperative, educational service unit, local or regional office of mental retardation, or some combination thereof, or such other agency approved by the Department of Education as may provide a special education program including an institution not wholly owned or controlled by the state or a political subdivision.

003.55 ***Service provider*** means an individual or service agency, excluding a school district or approved cooperative, provisionally approved by the Nebraska Department of Education.

003.56 ***Special education*** means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings and instruction in physical education. The term includes travel training, vocational education, speech-language pathology, occupational therapy and physical therapy if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

003.56A ***Physical Education*** means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education and motor development.

003.56B ***Vocational Education*** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

003.57 ***Specially designed instruction*** means adapting as appropriate to the needs of an eligible child under this Chapter the content, methodology, or delivery of instruction to address the unique

needs of the child that result from the child's disability and to ensure access to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public school district or approved cooperative that apply to all children.

003.58 ***Student assistance team (SAT)*** means a group of persons utilizing problem solving and intervention strategies to assist the teacher(s) in the provision of general education.

003.59 ***Supplementary aids and services*** means, aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and non-academic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 008 of this Chapter.

003.60 ***Support services*** means preventative services for students not identified or verified as having a disability as per Section 006 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum and to avoid the need for potentially expensive special education placement and services.

003.61 ***Surrogate parent*** means an individual appointed by the school district or approved cooperative to act in place of a parent in safeguarding a child's rights in the special education decision making process.

003.62 ***Teacher meeting IDEA 2004 criteria***, for any special education teacher, has the meaning given in Section 602(10) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)

003.63 ***Transition services*** means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based upon the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate,

acquisition of daily living skills and a functional vocational evaluation. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.

003.64 ***Travel training*** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in the school, in the home, at work, and in the community).

003.65 ***Universal design*** has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

003.66 ***Ward of any court*** means any minor child who, by virtue of a court order entered by a court of competent jurisdiction, has been adjudicated to be a ward of the court.

003.67 ***Ward of the State*** means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in 92 NAC 51-003.44.

003.68 ***Weapon*** means a dangerous weapon as defined in 18 U.S.C. 930(g)(2) to mean a device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches in length.

004 Responsibility for Special Education Programs

004.01 All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs. School districts and approved

cooperatives responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children in detention facilities, correctional facilities, jails, and prisons.

004.02 The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on an individual basis by the multidisciplinary evaluation team.

004.03 Exceptions to the Requirement to Provide a Free Appropriate Public Education

004.03A Children with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.

004.03A1 The exception in 92 NAC 51-004.03A does not apply to children who have graduated but have not been awarded a regular high school diploma.

004.03A2 Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.05.

004.03A3 As used in this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the state□s academic standards such as a certificate or a general educational developmental credential (GED).

004.04 At the request of a parent or guardian, a school district shall issue a certificate of attendance to a student who receives special education services under 92 NAC 51, who has reached seventeen years of age, and who has not completed his or her individualized education program. A school district shall allow a student who receives a certificate of attendance under this section to participate in the high school graduation ceremony of such high school with students receiving high school diplomas. A student may receive only one certificate of attendance and may participate in only one graduation

ceremony based on such certificate. The receipt of a certificate of attendance pursuant to this section shall not affect a school district's obligation to continue to provide special education services to a student receiving such certificate.

004.04A Section 004.04 does not preclude a student from receiving a high school diploma by meeting the school district's graduation requirements established pursuant to Neb. Rev. Stat. §79-729 or in his or her individualized education program or receiving a diploma of high school equivalency under Neb. Rev. Stat. §79-730 upon completing the requirements of such section. The school district may allow a student who has previously participated in a graduation ceremony based on a certificate of attendance to participate in an additional graduation ceremony when such student receives a high school diploma.

004.05 Participation in Assessments

004.05A School districts shall include all public school children with disabilities in all general state and district-wide assessment programs, including assessments described under section 612(a)(16)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

004.05B In the case of a district-wide assessment, the school district shall develop guidelines for the provision of appropriate accommodations.

004.05C In the case of a district-wide assessment, the school district shall develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under 92 NAC 51-004.05A with accommodations as indicated in their respective individualized education programs. The guidelines shall provide for accommodations and alternate assessments that:

004.05C1 Are aligned with the Nebraska Department of Education's challenging academic content standards and challenging student academic achievement standards; and

004.05C2 If the Nebraska Department of Education has adopted alternate academic achievement standards permitted

under Section 612(a)(16)(C)(ii)(II) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), measure the achievement of children with disabilities against those standards.

004.05D School districts shall make available to the public, and report to the public with the same frequency and in the same detail as they report on the assessment of nondisabled children, the following:

004.05D1 The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in these assessments.

004.05D2 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C1.

004.05D3 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C2.

004.05D4 The performance results of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual child), compared with the achievement of all children, including children with disabilities, on those assessments.

004.05E In the case of a district-wide assessment, the school district or approved cooperative shall, to the extent feasible, use universal design principles in developing and administering any assessments under this Section.

004.06 Reporting of Information Regarding Children with Disabilities

004.06A Individual child information shall be reported electronically via the NDE Portal. Each school district or approved cooperative shall maintain and report the following information for children with verified disabilities receiving services according to an individualized education program.

004.06A1 Name (or identifier approved by NDE) and birthdate;

004.06A2 County, district of legal residence and building of attendance;

004.06A3 Program and instructional setting attended;

004.06A4 Type(s) of disability;

004.06A5 Race/ethnicity, gender, and limited English proficiency;

004.06A6 Type(s) of service received;

004.06A7 Indication of percent of time spent receiving special education service (for inclusive and segregated settings) and in regular education;

004.06A8 Date and reason for exiting special education;

004.06A9 State Ward Status and indication of appointment of surrogate if required;

004.06A10 Initial verification date and disability for children verified pursuant to 92 NAC 51-006.04;

004.06A11 Whether the child received a regular diploma based on the same standards as general education peers or based on the goals met in the child's IEP.

004.06B This data shall be updated at least annually to reflect change(s) in the above information.

004.06C Public special purpose school systems accredited under 92 NAC 10 and school districts or approved cooperatives shall prepare an accurate and unduplicated child count as of October 1 of each year. The October 1 child count shall be approved and submitted electronically by the portal administrator or designee via the NDE portal on or before October 31 of each year.

004.06D Public special purpose school systems accredited under 92 NAC 10 and school districts or approved cooperatives shall prepare an accurate and unduplicated year-end child count as of June 30 of each year. The June 30 year-end child count shall be approved and submitted electronically by the portal administrator or designee via the NDE portal on or before June 30 of each year.

004.06E School districts and approved cooperatives shall report their incidences, duration, and count of removals, suspensions, and expulsions of children receiving special education services by June 30 of each year. The report must be disaggregated by race/ethnicity, gender, LEP status and disability category.

004.07 A school district or approved cooperative shall submit a single district plan, participate in a plan submitted by a cooperative approved by the Department of Education, or any combination thereof. The State Board of Education shall approve or disapprove cooperatives for direct receipt of payment based on the following criteria:

004.07A The cooperative must be administered by a school district or an Educational Service Unit;

004.07B The participating school districts have certified that the cooperative is authorized to receive special education payments due the districts;

004.07C The cooperative provides evidence of agreements and procedures which provide for long term operation;

004.07D The cooperative proposes to operate programs which can be expected to increase program and financial efficiency and effectiveness; and

004.07E The cooperative provides evidence that the proportionate financial share as determined by the provisions of Sections 011 and 012 of each participating school district can be determined and documented.

004.08 School District or Approved Cooperative Special Education Policies and Procedures

004.08A The school district or approved cooperative shall develop, adopt and have on file with the Nebraska Department of Education current policies, procedures and forms for special education programs for all resident public and nonpublic school children with disabilities, in accordance with all applicable state and federal requirements. Policies and procedures shall govern identification, evaluation and verification, individualized education program, placement (least restrictive environment), confidentiality, procedural safeguards, comprehensive system of personnel development, transportation, and surrogate parents within the school district or

approved cooperative. Additionally, policies and procedures shall govern free appropriate public education, child find, transition from Part C of the IDEA to preschool programs, children in nonpublic schools, personnel standards, performance goals and indicators, participation in assessments, reporting related to assessment results, and suspension and expulsion.

004.09 Notice and Opportunity for Hearing Before Withholding Funds

004.09A A school district or an approved cooperative shall be notified by certified mail to the head administrator whenever the Office of Special Education intends to recommend to the State Board of Education that funds be withheld from the school district or approved cooperative.

004.09B Within 21 calendar days of the school district's or approved cooperative's receipt of the notice of the Office of Special Education's intention to recommend withholding funds to the State Board of Education, the school district or approved cooperative may request in writing a review by the Commissioner or designee. Following the review, the Commissioner or designee shall:

004.09B1 Notify the school district or approved cooperative by certified mail that, based upon the review, (s)he will recommend to the State Board of Education that funds be withheld from the school district or approved cooperative, or

004.09B2 Notify the school district or approved cooperative that funds will not be withheld.

004.09C Within 30 calendar days of receipt of the notice of the Commissioner's intention to withhold funds, the school district or approved cooperative may request in writing a hearing before the State Board of Education. The hearing shall be conducted in accordance with the hearing procedures of 92 NAC 61, including provisions of that Chapter relating to evidence.

004.10 Children with Disabilities who are Wards of the State or Court

004.10A Responsibility for the provision and payment of a free appropriate public education for wards of the state or court is determined pursuant to Neb. Rev. Stat. §79-215.

004.11 Special Requirements

004.11A Each school district or approved cooperative shall take steps to ensure that its children with verified disabilities have available to them the variety of educational programs and services available to children without disabilities in the areas served by the school district including art, music, industrial arts, family consumer science education, and vocational education.

004.11B Each school district or approved cooperative shall comply with any federal health or safety requirements that apply to the facilities that the school district or approved cooperative uses to provide a free appropriate public education for children with verified disabilities.

004.11C Each school district or approved cooperative shall administer or supervise the administration of all educational programs for children with verified disabilities.

004.11D Prohibition on mandatory medication:

004.11D1 The school districts, approved cooperatives and special education and related services providers are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for the child as a condition of attending school, receiving an evaluation under Section 006 of this Chapter, or receiving services under 92 NAC 51.

004.11D2 Nothing in 92 NAC 51-004.11D1 shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a child's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

004.12 Innovative Educational Projects

004.12A School districts and approved cooperatives wishing to conduct innovative educational projects for the purpose of improving instruction or increasing educational opportunities for children with disabilities that would result in deviating from the

standards in this Chapter, shall submit a detailed written plan to the Commissioner of Education.

004.12A1 The length of the project must be specified in the plan, not to exceed three years, and must provide for an annual review of the progress of the program.

004.12A2 If the submitted project requires a waiver of any of the provisions of this Chapter which are not required by State statute and Federal law or regulation, the Commissioner shall submit the plan to the State Board of Education with recommendations.

004.12A3 The State Board of Education may approve the requested plan if the plan demonstrates that it promotes quality learning, equity, accountability, and that the Commissioner of Education will be informed annually of the progress and the project results.

004.12A4 The State Board of Education shall reject the plan if, in its opinion, the plan would not promote quality learning, equity, accountability or if it does not provide that the Commissioner of Education will be informed annually of the progress of the plan. The State Board of Education shall also reject the plan if, in the State Board of Education's opinion, the plan results in a deviation of standards contained in this Chapter which are specifically required by statute or federal law or regulation.

004.13 All school districts or approved cooperatives shall participate in an ongoing review of their special education programs for purposes of improving outcomes utilizing the Improving Learning for Children with Disabilities self assessment process (ILCD).

004.14 All special education programs shall comply with the requirements of state and federal law and regulation concerning the education of children with disabilities and shall be monitored at least once every five years for compliance with state and federal special education law and regulation.

004.14A Failure to comply with the provisions of state and federal statute and administrative rules concerning education of children with disabilities shall result in notification of school districts or approved cooperatives of the specific program deficiencies by the

Office of Special Education.

004.14B School districts or approved cooperatives shall be afforded 45 days to respond to the initial notification with a report of the resolution of the deficiencies or a plan for resolution.

004.14C School districts or approved cooperatives failing to respond as set forth in 92 NAC 51-004.14B shall be afforded an additional 30 days following contact from the Administrator of the Office of Special Education or the designee of the Administrator to submit a plan for resolution of the deficiencies.

004.14D Deficiencies must be corrected as soon as possible, and in no case later than one year after the school district or approved cooperative has been notified of the noncompliance. Deficiencies not corrected according to the timelines set forth in 92 NAC 51-004.14 shall be subject to the procedures outlined in 92 NAC 51-004.09.

004.14E Any school district or approved cooperative not meeting the requirements of this Chapter shall be in violation of the law. No state or federal funds shall be paid to any school district or approved cooperative as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of the State of Nebraska to be paid to such district or approved cooperative.

004.14F The Nebraska Department of Education will monitor school districts and approved cooperatives on the implementation of IDEA as amended in 2004 as required by 34 CFR 300.600 including the enforcement provision contained in 34 CFR 300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v) and (c)(2) and annually report on the districts and cooperatives performance.

004.15 Access to Instructional Materials

004.15A A school district or approved cooperative that chooses to coordinate with the National Instructional Materials Access Center (NIMAC) when purchasing print instructional materials shall enter into a written contract with the publisher of the print instructional materials to:

004.15A1 Require the publisher to prepare and, on or before the delivery of the print instructional materials, provide to the

National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard (NIMAS); or

004.15A2 Purchase instructional materials from a publisher that are produced in or may be rendered in specialized formats.

004.15B Nothing in this section shall be construed to require a school district or approved cooperative to coordinate with the National Instructional Materials Access Center. If a school district or approved cooperative chooses not to coordinate with the National Instructional Materials Access Center, the school district or approved cooperative shall provide an assurance to the Nebraska Department of Education that the school district or approved cooperative will provide instructional materials to children with blindness or other children with print disabilities at the same time as other children.

005 Early Childhood Services for Children with Disabilities Birth to Age Five

005.01 Each school district or approved cooperative shall demonstrate participation in a plan of services for children with disabilities who are less than five years of age. Such plans shall be prepared by each planning region and be updated annually and shall address:

005.01A Gaps and barriers in service delivery;

005.01B Child Find;

005.01C Training and technical assistance;

005.01D Parent involvement; and

005.01E Resources.

005.02 Annual Meetings

005.02A The annual meeting must be conducted prior to July 1 of each year.

005.02B The date and place of the annual meeting shall be disseminated within the region so that all school districts, approved cooperatives, service providers, parents, and nonpublic agencies

serving children below age five have access to the information.

005.02C A written report of the annual meeting shall be prepared, which includes a list of participants and identified gaps and barriers. The written report shall be submitted to the Nebraska Department of Education on a date specified by the Department.

005.03 Transition of Children from the early intervention programs to preschool programs

005.03A The school district or approved cooperative shall have in effect policies and procedures to ensure that:

005.03A1 Children participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, shall experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the IDEA;

005.03A2 By the third birthday of a child described in 92 NAC 51-005.03A1, an IEP or an IFSP, has been developed and is being implemented for the child; and

005.03A3 The school district or approved cooperative will participate in transition planning conferences.

006 Identification of Children with Disabilities, Multidisciplinary Teams and Reporting of Diagnostic Data

006.01 Child Find

006.01A All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

006.01A1 The child find requirements apply to highly mobile children including migrant children.

006.01A2 The child find requirements also apply to a child who is suspected of being a child with a disability under 92 NAC 51-003.08 and in need of special education, even though the child is advancing from grade to grade.

006.01B Student Assistance Team (SAT) or Comparable Problem Solving Team

006.01B1 For a school age student, a general education student assistance team or a comparable problem solving team shall be used prior to referral for multidisciplinary team evaluation.

006.01B2 The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.

006.01B3 If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 92 NAC 51-006.01B and a listing of the members of the SAT or comparable problem solving team.

006.02 General Evaluation Requirements

006.02A The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

006.02B Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.

006.02B1 The resident school district or approved cooperative shall conduct a full and individual initial evaluation for each child being considered for special education and related services before the initial provision of special education and

related services to a child with a disability. The initial evaluation shall determine whether a child is a child with a disability, and the educational needs of the child.

006.02B1a In implementing the requirements of 92 NAC 51-006.02B the school district or approved cooperative shall ensure that:

006.02B1a(1) The evaluation is conducted in accordance with the procedures described in Section 006 of this Chapter.

006.02B1a(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of Section 007 of this Chapter.

006.02C Verification criteria and procedures:

006.02C1 School districts and approved cooperatives must ensure assessments and other evaluation materials used to assess a child under this Chapter;

006.02C1a Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

006.02C1b Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer;

006.02C2 Are used for purposes for which the assessments or measures are valid and reliable.

006.02C3 School districts and approved cooperatives must ensure assessments of children with disabilities who transfer from one school or approved cooperative to another school or approved cooperative in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

006.02C4 School districts and approved cooperatives must

ensure materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

006.02C5 School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

006.02C5a Whether the child is a child with a disability under 92 NAC 51-003.08; and

006.02C5b The content of the child's IEP.

006.02C6 School districts and approved cooperatives must ensure any standardized tests that are given to a child:

006.02C6a Have been validated for the specific purpose for which they are used; and

006.02C6b Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

006.02C6b(i) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of the test administration) must be included in the evaluation report.

006.02C7 School districts and approved cooperatives must ensure tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

006.02C8 School districts and approved cooperatives must

ensure tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

006.02C9 School districts and approved cooperatives must ensure no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

006.02C10 School districts and approved cooperatives must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

006.02C11 School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

006.02C12 The school district or approved cooperative must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

006.02C13 The school district or approved cooperative must use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

006.02C14 In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:

006.02C14a Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

006.02C14b Ensure that information obtained from all of these sources is documented and carefully considered.

006.03 Multidisciplinary Evaluation Team (MDT) Requirements

006.03A The multidisciplinary evaluation team (including the child's parents) shall be responsible for the analysis, assessment, and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in Section 006 of this Chapter and the definitions found in 92 NAC 51-006.04, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IEP.

006.03B For children attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.

006.03C In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), lack of instruction in math, or limited English proficiency.

006.03D If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Section 007 of this Chapter.

006.03E Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)

006.03E1 The team shall prepare a written report of the results of the evaluation.

006.03E2 The report shall include a statement of:

006.03E2a Whether the child qualifies as a child with a disability based on the criteria and definition contained in 92 NAC 51-006.04;

006.03E2b The child's educational needs;

006.03E2c The basis for making the determination; and

006.03E2d A listing of the team members.

006.03E3 Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03E4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.

006.03F Multidisciplinary Evaluation Team Written Report for a Child with a Suspected Specific Learning Disability

006.03F1 The MDT shall prepare a written report of the results of the evaluation.

006.03F2 The report shall include a statement of:

006.03F2a Whether the child has a specific learning disability based on the criteria and definition contained in 92 NAC 51-006.04K.

006.03F2b The child's educational needs;

006.03F2c The basis for making the determination including an assurance that the determination was made in accordance with 92 NAC 51-006.02C14;

006.03F2d The relevant behavior if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

006.03F2e The educationally relevant medical findings, if any;

006.03F2f Whether the child does not achieve adequately for the child's age or to meet state-approved grade level standards consistent with 92 NAC 51-006.04K3a and the child does not make sufficient progress to meet age or state approved grade level standards consistent with 92 NAC 51-006.04K3b; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state approved grade level standards or intellectual development consistent with 92 NAC 51-006.04K3b(1);

006.03F2g The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

006.03F2h If the child has participated in a process that assesses the child's response to scientific, research-based intervention, then the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about:

006.03F2h(1) The school district's or approved cooperative's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

006.03F2h(2) Strategies for increasing the child's rate of learning; and

006.03F2h(3) The parent's right to request an evaluation.

006.03F2i A listing of the team members.

006.03F3 Each team member shall certify in writing whether the report reflects his or her conclusion. If the report does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03F4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to

the parent at no cost.

006.03G For a school age child who after initial MDT evaluation does not qualify for special education services or for a child with a verified disability who upon reevaluation no longer qualifies for special education services, a problem solving team shall document a plan to assist the teacher(s) in the provision of regular education.

006.04 Eligibility for Special Education

006.04A School districts or approved cooperatives shall provide special education services only to children with verified disabilities.

006.04B Autism

006.04B1 To qualify for special education services in the category of Autism, the child must have a developmental disability which:

006.04B1a Significantly affects verbal and nonverbal communication and social interaction;

006.04B1b Is generally evident before age three; and

006.04B1c That adversely affects the child's educational performance.

006.04B1d Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, and unusual responses to sensory experiences.

006.04B2 Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in 92 NAC 51-006.04E.

006.04B3 A child who manifests the characteristics of autism after age 3 could be verified as having autism if the other criteria in 92 NAC 51-006.04B1 are met.

006.04C Deaf-Blindness

006.04C1 To qualify for special education services in the category of Deaf-Blindness, the child must have concomitant hearing and visual impairments, the combination of which causes:

006.04C1a Severe communication needs; and

006.04C1b Other developmental and educational needs.

006.04C1c The severity of these needs is such that they cannot be accommodated in special education programs solely for children with deafness or blindness.

006.04D Developmental Delay

006.04D1 To qualify for special education services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services:

006.04D1a Cognitive development,

006.04D1b Physical development,

006.04D1c Communication development,

006.04D1d Social or emotional development,

006.04D1e Adaptive behavior or skills development, or

006.04D1f A diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.

006.04D2 Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age eight.

006.04E Emotional Disturbance

006.04E1 To qualify for special education services in the category of emotional disturbance, the child must have a condition exhibiting one or more of the following characteristics

over a long period of time and to a marked degree that adversely affects the child's educational performance:

006.04E1a An inability to learn that cannot be explained by intellectual, sensory, or health factors;

006.04E1b An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

006.04E1c Inappropriate types of behavior or feelings under normal circumstances;

006.04E1d A general pervasive mood of unhappiness or depression; or

006.04E1e A tendency to develop physical symptoms or fears associated with personal or school problems.

006.04E2 The term includes schizophrenia. The term does not apply to children with social maladjustments, unless it is determined that they have an emotional disturbance.

006.04F Hearing Impairment

006.04F1 To qualify for special education services in the category of Hearing Impairment, a child must have an impairment in hearing which:

006.04F1a Is so severe that the child is impaired in processing linguistic information through hearing with or without amplification, or

006.04F1b Is permanent or fluctuating, and

006.04F1c Adversely affects the child's educational performance.

006.04F2 This term combines the state definition of "deaf" contained in Neb. Rev. Stat. §79-1118.01(4), the state definitior of "hard of hearing" in Neb. Rev. Stat. §79-1118.01(7), the federal definition of "deafness" in 34 CFR 300.8(c)(3), and the federal definition of "hearing impairment" in 34 CFR 300.8(c)(5).

006.04G Intellectual Disability

006.04G1 To qualify for special education services in the category of Intellectual Disability, the child must demonstrate:

006.04G1a Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

006.04H Multiple Impairments

006.04H1 To qualify for special education services in the category of Multiple Impairments, the child must have concomitant impairments (such as intellectual disability-visual impairment, intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

006.04H2 This classification does not include children with deaf-blindness.

006.04I Orthopedic Impairment

006.04I1 To qualify for services in the category of Orthopedic Impairment, the child must have a severe orthopedic impairment that adversely affects the child's educational performance.

006.04I2 The category includes children with impairments caused by:

006.04I2a Congenital anomaly,

006.04I2b Impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and

006.04I2c Impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).

006.04J Other Health Impairment

006.04J1 To qualify for special education services in the category of Other Health Impairment, the child must have:

006.04J1a Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems which adversely affects the child's educational performance such as:

006.04J1a(1) Asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome.

006.04K Specific Learning Disability

006.04K1 To qualify for special education services in the category of specific learning disability the child must have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The category includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The category does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

006.04K2 The MDT of a child suspected of having a specific learning disability shall include at least:

006.04K2a The child's parents;

006.04K2b For a school age child, the child's regular teacher(s) or if a child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;

006.04K2c For a child below age 5, a teacher qualified to teach a child below age 5;

006.04K2d Special educator with knowledge in the area of specific learning disabilities;

006.04K2e At least one person qualified to conduct initial individual diagnostic examinations of children, such as a school psychologist, speech language pathologist, or remedial reading teacher; and

006.04K2f A school district administrator, or a designated representative.

006.04K3 The MDT may determine that a child has a specific learning disability if:

006.04K3a The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.

006.04K3b The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 92 NAC 51-006.04K3a when using a process based on the child's response to scientific, research-based intervention; or

006.04K3b(1) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.

006.04K4 The team determines that its findings under 92 NAC 51-006.04K3a and 006.04K3b are not primarily the result of:

006.04K4a A visual, hearing, or motor disability;

006.04K4b Intellectual disability;

006.04K4c Emotional disturbance;

006.04K4d Cultural factors,

006.04K4e Environmental or economic disadvantage; or

006.04K4f Limited English proficiency.

006.04K5 To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 92 NAC 51-006.02:

006.04K5a Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

006.04K5b Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

006.04K6 The school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the timeframes described in 92 NAC 51-009.04A1, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51-006.04K2.

006.04K6a If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in 92 NAC 51-006.04K5a and b; and

006.04K6b Whenever a child is referred for an evaluation.

006.04K7 The school district or approved cooperative must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

006.04K8 The MDT, in determining whether a child has a

specific learning disability, must decide to:

006.04K8a Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

006.04K8b Have at least one member of the MDT described in 92 NAC 51-006.04K2 conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 92 NAC 51-009.08 is obtained.

006.04K8c In the case of a child of less than school age or out of school, an MDT member must observe the child in an environment appropriate for a child of that age.

006.04L Speech-Language Impairment

006.04L1 To qualify for special education services in the category of Speech-Language Impairment, the child must have:

006.04L1a A communication disorder such as:

006.04L1a(1) Stuttering;

006.04L1a(2) Impaired articulation;

006.04L1a(3) Language impairment; or

006.04L1a(4) A voice impairment.

006.04L2 This disorder must adversely affect the child's educational performance.

006.04M Traumatic Brain Injury

006.04M1 To qualify for special education services in the category of Traumatic Brain Injury, the child must have:

006.04M1a An acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that

adversely affects the child's educational performance.

006.04M1b The category includes open or closed head injuries resulting in impairments in one or more areas such as:

006.04M1b(1) Cognition;

006.04M1b(2) Language;

006.04M1b(3) Memory;

006.04M1b(4) Attention;

006.04M1b(5) Reasoning;

006.04M1b(6) Abstract thinking;

006.04M1b(7) Judgment;

006.04M1b(8) Problem solving;

006.04M1b(9) Sensory, perceptual and motor abilities;

006.04M1b(10) Psychosocial behavior;

006.04M1b(11) Physical functions;

006.04M1b(12) Information processing; and

006.04M1b(13) Speech.

006.04M2 The category does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

006.04N Visual Impairment including Blindness

006.04N1 To qualify for special education services in the category of Visual Impairment, including blindness, the child must have;

006.04N1a An impairment in vision that, even with correction, adversely affects the child's educational

performance.

006.04N2 Reevaluations

006.05 This category includes children who have partial sight or blindness.

006.05A A school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter:

006.05A1 If the school district or approved cooperative determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant, a reevaluation; or

006.05A2 If the child□s parents or teacher requests a reevaluation.

006.05B A reevaluation conducted under subsection 006.05 of this Chapter:

006.05B1 May occur not more than once a year, unless the parent and the school district or approved cooperative agree otherwise; and

006.05B2 Must occur at least once every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary.

006.06 Review of Existing Evaluation Data

006.06A As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals as appropriate, shall:

006.06A1 Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or State assessments and classroom-based observations, and observations by teachers and related services providers; and

006.06A2 On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to

determine:

006.06A2a Whether the child is a child with a disability, as described in 92 NAC 51-003.08, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

006.06A2b The present levels of academic achievement and related developmental needs of the child;

006.06A2c Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

006.06A2d Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

006.06B The school district or approved cooperative shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP team under 92 NAC 51-006.06A2.

006.06C The IEP team and other qualified professionals may conduct its review without a meeting.

006.06D If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child□s educational needs the school district or approved cooperative:

006.06D1 Shall notify the child's parents of:

006.06D1a That determination and the reasons for the determination; and

006.06D1b The right of the parents to request an assessment to determine whether the child continues to be

a child with a disability and to determine the child's educational needs.

006.06D2 The school district or approved cooperative shall not be required to conduct such an assessment unless requested to by the child's parents.

006.06E A school district or approved cooperative shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

006.06E1 The evaluation described in 92 NAC 51-006.06E is not required before the termination of a student's eligibility under this Chapter due to graduation from secondary school with a regular high school diploma, or to exceeding the age eligibility for a free appropriate public education under Neb. Rev. Stat. §79-1126. For a child whose eligibility terminates under these circumstances, a school district or approved cooperative shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

006.07 Independent Educational Evaluation

006.07A A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, subject to the provisions of 92 NAC 51-006.07.

006.07B Each school district or approved cooperative shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school district's or approved cooperative's criteria applicable for independent educational evaluations.

006.07C A parent is entitled to only one independent educational evaluation at public expense each time the school district or approved cooperative conducts an evaluation with which the parent disagrees.

006.07C1 Public expense means that the school district or

approved cooperative either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

006.07D If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either:

006.07D1 Initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate; or

006.07D2 Ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.

006.07E If the school district or approved cooperative initiates a hearing and the final decision is that the school district's or approved cooperative's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

006.07F If a parent requests an independent educational evaluation, the school district or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or approved agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

006.07G If the parent obtains an independent educational evaluation at public expense or shares with the school district or approved cooperative an evaluation obtained at private expense, the results of the evaluation:

006.07G1 Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

006.07G2 May be presented by any party as evidence at a

hearing under 92 NAC 55 regarding that child.

006.07H If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

006.07I If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or approved cooperative uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

006.07J Except for the criteria described in 92 NAC 51-006.07I, a school district or approved cooperative may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

007 Individualized Education Program (IEP)

007.01 An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperatives shall meet the requirements of 92 NAC 52. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education laws apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.

007.02 School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child□s IEP.

007.02A At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.

007.02A1 From the end of the school year in which a child reaches age 3, until the child□s sixth birthday, the IEP team must consider an IFSP that contains the IFSP content

(including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school readiness and incorporates pre- literacy, language, and numeracy skills for children with an IFSP who are at least three years of age), and that is developed in accordance with the IEP procedures. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child's parents.

007.02B Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.

007.02C The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

007.02D Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

007.03 IEP Team Participants

007.03A The school district or approved cooperative shall ensure and document that each IEP team includes the following:

007.03A1 The parents of a child with a disability or documentation of 92 NAC 51-007.06D;

007.03A2 Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

007.03A2a The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications,

and support for school personnel consistent with 92 NAC 51-007.07A5.

007.03A3 Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;

007.03A4 A representative of the school district or approved cooperative who:

007.03A4a Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

007.03A4b Is knowledgeable about the general education curriculum; and

007.03A4c Is knowledgeable about the availability of resources of the school district or approved cooperative;

007.03A4c(1) A school district or approved cooperative may designate another member of the IEP team to also serve as the school district or approved cooperative representative, if the criteria in 92 NAC 51-007.03A4 are satisfied.

007.03A5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;

007.03A6 At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

007.03A6a The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative) who invited the individual to be a member of the IEP.

007.03A7 Whenever appropriate, the child with a disability;

007.03A8 For a child attending a nonpublic school, a

representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls;

007.03A9 For children receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to ensure participation by the approved service agency, including written communication, or individual or conference telephone calls;

007.03A10 If the purpose of the meeting is to consider postsecondary goals for the child and the transition services needed to assist the child in reaching those goals:

007.03A10a The school district or approved cooperative must invite the child;

007.03A10a(1) If the child does not attend the IEP meeting, the school district or approved cooperative shall take other steps to ensure that the child's preferences and interests are considered.

007.03A10b To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the school district or approved cooperative must invite a representative of any participating agency that is likely to be responsible for providing or paying for the transition services.

007.03A11 For a child verified in the category of hearing impairment, an educator endorsed to teach a child with hearing impairments.

007.03A12 For a child verified in the category of visual impairment, an educator endorsed to teach a child with visual impairments.

007.04 IEP Team Attendance

007.04A A member of the IEP team described in 92 NAC 51-007.03A2 through 007.03A5 shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability

and the school district or approved cooperative agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

007.04B A member of the IEP team in 92 NAC 51-007.04A may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

007.04B1 The parent, in writing, and the school district or approved cooperative consent to the excusal; and

007.04B2 The member submits, in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting.

007.05 In the case of a child who was previously served as an infant or toddler under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services.

007.06 Parent Participation

007.06A The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:

007.06A1 Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and

007.06A2 Scheduling the meeting at a mutually agreed on time and place.

007.06B The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a, and 007.05.

007.06B1 For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also

must:

007.06B1a Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child in accordance with 92 NAC 51-007.07A9; and

007.06B1b Indicate that the school district or approved cooperative will invite the child to the meeting; and

007.06B1c Identify any other agency that will be invited to send a representative.

007.06C If neither parent can attend the IEP meeting, the school district or approved cooperative shall use other methods to ensure parent participation, including individual or conference telephone calls consistent with 92 NAC 51-007.09H (related to alternate means of meeting participation).

007.06D A meeting may be conducted without a parent in attendance if the school district or approved cooperative is unable to convince the parents they should attend. In this case, the school district must keep a record of its attempts to arrange a mutually agreed on time and place such as:

007.06D1 Detailed records of telephone calls made or attempted and the results of the calls;

007.06D2 Copies of correspondence sent to the parents and any responses received; and

007.06D3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.

007.06E The school district or approved cooperative shall take whatever action is necessary to ensure that the parent understands the proceedings of an IEP conference, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

007.07 IEP Development

007.07A The IEP shall include:

007.07A1 A statement of the child's present levels of academic

achievement and functional performance, including:

007.07A1a How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

007.07A1b For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

007.07A2 A statement of measurable annual goals, including academic and functional goals, designed to:

007.07A2a Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in appropriate activities, and 007.07A2b Meet each of the child's other educational needs that result from the child's disability;

007.07A3 For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

007.07A4 A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

007.07A5 A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

007.07A5a To advance appropriately toward attaining the annual goals;

007.07A5b To be involved in and progress in the general

education curriculum and to participate in extracurricular and other nonacademic activities; and

007.07A5c To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5;

007.07A6 An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 92 NAC 51-007.07A5;

007.07A7 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

007.07A7a The child cannot participate in the regular assessment; and

007.07A7b The particular alternate assessment selected is appropriate for the child; and

007.07A8 The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications;

007.07A9 Beginning not later than the first IEP to be in effect when the child turns 14, and updated annually thereafter.

007.07A9a Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

007.07A9b The transition services (including courses of study) needed to assist the child in reaching those goals; and

007.07A9c If a participating agency, other than the school district or approved cooperative fails to provide the

transition services described in the IEP, the school district or approved cooperative shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

007.07A9c(i) Nothing in this Chapter relieves any participating agency, including the State Division of Vocational Rehabilitation, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility of that agency.

007.07A10 Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in 92 NAC 51-007.07A, or to require the IEP team to include information under one component of a child's IEP that is already contained in another component of such IEP.

007.07B In developing, reviewing or revising each child's IEP:

007.07B1 The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

007.07B2 The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

007.07B3 In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.

007.07B4 In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as those needs relate to the child's IEP.

007.07B5 In the case of a child who is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of

Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

007.07B6 The IEP team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, shall consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

007.07B7 The IEP team shall consider whether the child needs assistive technology devices and services.

007.07C Services

007.07C1 Routine checking of hearing aids and external components of surgically implanted medical devices.

007.07C1a Each school district and approved cooperative must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

007.07C1b Subject to 92 NAC 51-007.07C1b(1) each school district and approved cooperative must ensure that the external components of surgically implanted medical devices are functioning properly.

007.07C1b(1) For a child with a surgically implanted medical device who is receiving special education and related services under this Chapter, a school district and approved cooperative is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

007.07C2 Physical education services, specially designed if necessary, must be made available to every child with a verified disability receiving a free, appropriate public education, unless the school district or approved cooperative enrolls children without disabilities and does not provide physical

education to children without disabilities in the same grades.

007.07C2a Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

007.07C2a(1) The child is enrolled full time in a separate facility; or

007.07C2a(2) The child needs specially designed physical education as prescribed in the child's individualized education program.

007.07C2b If specially designed physical education is prescribed in a child's individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly or make arrangements for it to be provided through other public or nonpublic programs.

007.07C2c The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.

007.07C3 Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child's:

007.07C3a Special education under 92 NAC 51-003.56;

007.07C3b Related services under 92 NAC 51-003.49; or

007.07C3c Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.

007.07C3d On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in

order to receive a free appropriate public education.

007.07C4 The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.

007.07C4a Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.

007.07C5 Extended School Year Services (ESYS)

007.07C5a Each school district or approved cooperative shall ensure that extended school year services are available as necessary to provide a free appropriate public education consistent with 92 NAC 51-007.07C5b.

007.07C5b Extended School Year (ESY) services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Section 007, that the services are necessary for the provision of a free appropriate public education.

007.07C5c In implementing the requirements of this section, a school district or approved cooperative may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

007.07C6 The need for related services of an instructional nature shall be documented on the IEP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not

require the additional verification of a secondary disability.

007.08 Programs for Children who Transfer School Districts or Approved Cooperatives

007.08A Transfer within the same state □If a child with a disability (who had an IEP that was in effect in a previous school district or approved cooperative in Nebraska) transfers to a new school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child□s IEP from the previous school district or approved cooperative), until the new school district or approved cooperative either:

007.08A1 Adopts the child□s IEP from the previous school district or approved cooperative; or

007.08A2 Develops, adopts, and implements a new IEP that meets the applicable requirements of 92 NAC 51-007.

007.08B Transfer from outside the state □If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child□s IEP from the previous school district or approved cooperative), until the new school district or approved cooperative:

007.08B1 Conducts an evaluation pursuant to Section 006 of this Chapter (determined to be necessary by the new school district or approved cooperative); and

007.08B2 Develops, adopts, and implements a new IEP, if appropriate that meets the requirements of 92 NAC 51-007.

007.08C Transmittal of records

007.08C1 To facilitate the transition for a child who transfers schools the new school in which the child enrolls shall take reasonable steps to promptly obtain the child□s records,

including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to Section 99.31(a)(2) of Title 34, Code of Federal Regulations.

007.08C2 The previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

007.08C3 Neb. Rev. Stat. §79-2,105 requires that a copy of a public or private school's files or records concerning a student shall be provided at no charge, upon request, to any public or private school to which the student transfers.

007.09 IEP Meeting

007.09A A meeting to develop an IEP for a child must be held within thirty (30) calendar days of a determination that the child needs special education and related services.

007.09B After the initial IEP meeting, IEPs must be in effect at the beginning of each school year.

007.09C The IEP team shall review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.

007.09D The school district or approved cooperative shall provide a copy of the IEP to parents at no cost.

007.09E In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

007.09E1 If changes are made to the child's IEP in accordance with 92 NAC 51-007.09E, the school district or approved cooperative must ensure that the child's IEP team is informed of those changes.

007.09F Changes to the IEP may be made either by the entire IEP

team at an IEP team meeting, or as provided in 92 NAC 51-007.09E of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

007.09G To the extent possible, the school district or approved cooperative shall encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

007.09H When conducting IEP team meetings and placement meetings and carrying out administrative matters (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district or approved cooperative may agree to use alternative means of meeting participation, such as video conferences and conference calls.

007.10 The IEP team shall revise the IEP as appropriate to address:

007.10A Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;

007.10B The results of any reevaluation conducted under 92 NAC 51-006.05A;

007.10C The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;

007.10D The child's anticipated needs; or

007.10E Other matters.

007.11 Children with Disabilities in Adult Prisons

007.11A The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

007.11A1 The requirements of 92 NAC 51-007.07A7 (relating to participation of children with disabilities in general assessments); and

007.11A2 The requirements of 92 NAC 51-007.07A9 (relating to transition and planning and transition services) do not apply with respect to such children who will reach age 21 before they

will be eligible to be released from prison, based on consideration of their sentence and eligibility of early release.

007.11B Subject to 92 NAC 51-007.11B1, the IEP team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

007.11B1 The requirements of 92 NAC 51-003.31 and 007.07 (relating to IEPs), and 92 NAC 51- 008.01A (relating to LRE), do not apply with respect to the modifications described in 92 NAC 51-007.11B.

008 Placement of Children With Disabilities

008.01 Least Restrictive Environment (LRE) Requirements

008.01A The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

008.01B Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.

008.01C In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:

008.01C1 The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

008.01C2 The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.

008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

008.01D1 The continuum must:

008.01D1a Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and

008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

008.01E The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:

008.01E1 Is determined at least annually;

008.01E2 Is based on his or her individualized education program (IEP); and

008.01E3 Is as close as possible to the child's home.

008.01F The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.

008.01G Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.

008.01H In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.

008.01I A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of

needed modifications in the general curriculum.

009 Procedural Safeguards

009.01 Parent Participation in Meetings

009.01A The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

009.01B Each school district or approved cooperative must provide notice consistent with 92 NAC 51-007.06A1 and 007.06B to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 92 NAC 51-009.01A.

009.01C A meeting does not include informal or unscheduled conversations involving school district or approved cooperative's personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district or approved cooperative's personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

009.02 Parent Involvement in Placement Decisions

009.02A The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.

009.02B In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.

009.02C If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

009.02D A placement decision may be made by a team without the

involvement of the parents if the school district or approved cooperative is unable to obtain the parents participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.06D.

009.03 Opportunity to Examine Records

009.03A The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

009.03B Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

009.03B1 As used in 92 NAC 51-009.03B, participating agency means any agency or institution that collects, maintains or uses personally identifiable information or from which information is obtained under this Chapter.

009.03B2 The right to inspect and review education records includes:

009.03B2a The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and

009.03B2b The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

009.03B2c The right to have a representative of the parent inspect and review the records.

009.03B3 A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

009.03C Record of Access

009.03C1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating service agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

009.03D Records On More Than One Child

009.03D1 If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

009.03E List of Types and Locations of Information

009.03E1 Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the participating agency.

009.03F Fees

009.03F1 A participating agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

009.03F2 A participating agency may not charge a fee to search for or to retrieve information.

009.03G Amendment of Records at Parent's Request

009.03G1 A parent who believes that information in education records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child

may request the participating agency which maintains the information to amend the information.

009.03G2 The participating agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

009.03G3 If the participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

009.03H Opportunity for a Local Administrative Review

009.03H1 The participating agency shall, on request, provide an opportunity for a local administrative review to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

009.03I Result of Local Administrative Review

009.03I1 If, as a result of the local administrative review, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

009.03I2 If, as a result of the local administrative review, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the participating agency shall inform the parent of the right to place in the records the participating agency maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency.

009.03I3 Any explanation placed in the records of the child must:

009.03I3a Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the participating

agency; and

009.03I3b If the records of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

009.03J Consent for Release of Records

009.03J1 Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies in accordance with 92 NAC 51-009.03H1 unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

009.03J2 Except as provided in 92 NAC 51-009.03J3 and 009.03J4, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this Chapter.

009.03J3 Parental consent, or the consent of an eligible child who has reached the age of majority, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 92 NAC 51-007.03A10b.

009.03J4 If a child is enrolled, or is going to enroll in a nonpublic school that is not located in the school district of the parent□s residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent□s residence.

009.03K Safeguards

009.03K1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

009.03K2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

009.03K3 All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

009.03K4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the participating agency who may have access to personally identifiable information.

009.03L Records Regarding Migratory Children with Disabilities

009.03L1 The school district or approved cooperative shall cooperate in the Federal Secretary of Education's efforts under section 1413(a)(9) of the Individuals with Disabilities Education Act of 2004 (See Appendix A) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging among the States, health and education information regarding such children.

009.03M Retention and Destruction of Information and Records

009.03M1 The school district or approved cooperative shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.

009.03M2 The school district or approved cooperative shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

009.03M3 The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

009.04 Procedural Timelines

009.04A Each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.

009.04A1 Referral, notice to parents (See 92 NAC 51-009.05), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation.

009.04A1a The 45 school day timeline shall not apply to a school district or approved cooperative if:

009.04A1a(1) A child enrolls in a school served by the school district or approved cooperative after the relevant timeline in 92 NAC 51-009.04A1 has begun and prior to a determination by the child's previous school district or approved cooperative as to whether the child is a child with a disability, but only if the subsequent school district or approved cooperative is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district or approved cooperative agree to a specific time when the evaluation will be completed; or

009.04A1a(2) The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

009.04A2 Upon completion of a multidisciplinary team verification decision, school districts or approved cooperatives shall provide a reasonable notification and conduct an individualized education program conference within 30 calendar days.

009.04A3 As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.

009.05 Prior Written Notice

009.05A Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:

009.05A1 Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or

009.05A2 Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

009.05B Such prior written notice shall include:

009.05B1 A description of the action proposed or refused by the school district or approved cooperative;

009.05B2 An explanation of why the school district or approved cooperative proposes or refuses to take the action;

009.05B3 A description of other options the IEP team considered and the reasons why those options were rejected;

009.05B4 A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;

009.05B5 A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;

009.05B6 A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and

009.05B7 Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.

009.05C The notice must be written in language understandable to the general public, and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.

009.05D If the native language or other mode of communication of the parents is not a written language, the school district or approved cooperative shall take steps to ensure:

009.05D1 That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;

009.05D2 That the parents understand the content of the notice; and

009.05D3 That there is written evidence that the requirements of this section have been met.

009.06 Procedural Safeguards Notice

009.06A A copy of the procedural safeguards available to the parents of a child with a disability shall be given by the school district or approved cooperative to the parents only one time a school year, except that a copy shall also be given to the parents:

009.06A1 Upon initial referral or parental request for evaluation;

009.06A2 Upon request by a parent;

009.06A3 Upon receipt by the school district or approved cooperative of the first occurrence of the filing of a complaint under 92 NAC 51-009.11 and the first occurrence of filing a special education due process case under 92 NAC 55; and

009.06A4 In accordance with the discipline procedures in 92 NAC 51-016.

009.06B The procedural safeguards notice shall include a full explanation of all of the procedural safeguards relating to:

009.06B1 Independent educational evaluation;

009.06B2 Prior written notice;

009.06B3 Parental consent;

009.06B4 Access to educational records;

009.06B5 Opportunity to present and resolve disputes through the due process hearings and the state complaint procedures including;

009.06B5a The time period in which to file a state complaint or petition for a due process hearing;

009.06B5b The opportunity for the school district or

approved cooperative to resolve the dispute; and

009.06B5c The difference between the due process system and the state complaint procedures; including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.

009.06B6 The child's placement during pendency of due process proceedings;

009.06B7 Procedures for students subject to placement in an interim alternative educational setting;

009.06B8 Requirements for unilateral placement by parents of children in nonpublic schools at public expense;

009.06B9 The availability of mediation;

009.06B10 Due process hearings, including requirements for disclosure of evaluation results and recommendations;

009.06B11 Civil actions, including the time period in which to file such actions; and

009.06B12 Attorney's fees.

009.06C The notice of the procedural safeguards provided to the parent must be written in language understandable to the general public and provided in the native language of the parent as required by 92 NAC 51-009.05C and 009.05D.

009.06D The school district or approved cooperative may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

009.07 A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the school district or approved cooperative makes such option available.

009.08 Parental Consent

009.08A Parental Consent for Initial Evaluations

009.08A1 The school district or approved cooperative

proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 92 NAC 51-003.08 must obtain informed consent, consistent with 92 NAC 51-003.09, from the parent of the child before conducting the evaluation.

009.08A2 Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

009.08A3 The school district or approved cooperative must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

009.08A4 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the school district or approved cooperative is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

009.08A4a Despite reasonable efforts to do so, the school district or approved cooperative cannot discover the whereabouts of the parent of the child;

009.08A4b The rights of the parents of the child have been terminated in accordance with the State law; or

009.08A4c The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

009.08A5 If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 92 NAC 51-009.08A1 or the parent fails to respond to a request to provide consent, the school district or approved cooperative may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 92 NAC 51-009 (including the mediation procedures or the due process procedures), if appropriate.

009.08A5a The school district or approved cooperative does not violate its obligation under 92 NAC 51-006 to locate and identify the child as a child with a disability if it declines to pursue the evaluation.

009.08B Consent for Services

009.08B1 A school district or approved cooperative that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

009.08B1a Participation in or attendance at programs by children with verified disabilities from date of diagnosis to age five shall be voluntary as specified by the parent.

009.08B2 The school district or approved cooperative must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

009.08B3 If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services the school district or approved cooperative:

009.08B3a May not use the procedures in 92 NAC 51-009, except the mediation procedures in 79-009.12, ~~(including the mediation procedures or the due process procedures)~~ in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B3b Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

009.08B3c Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child.

009.08B4 If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district or approved cooperative:

009.08B4a May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 92 NAC 51-009.05 before ceasing the provision of special education and related services.

009.08B4b May not use the procedures in 92 NAC 51-009, except the mediation procedures in 79-009.12, ~~(including the mediation procedures and due process procedures)~~ in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B4c Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with further special education and related services; and

009.08B4d Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child for further provision of special education and related services.

009.08C Consent for Reevaluations

009.08C1 Subject to 92 NAC 51-009.08C2, each school district or approved cooperative must obtain informed parental consent, in accordance with 92 NAC 51-009.08A1, prior to conducting any reevaluation of a child with a disability.

009.08C1a If the parent refuses to consent to the reevaluation, the school district or approved cooperative may, but is not required to, pursue the reevaluation by using the consent override procedures described in 92 NAC 51-009.08A5. The school district or approved cooperative does not violate its obligation to locate and identify the child as a child with a disability if it declines to pursue the evaluation or reevaluation.

009.08C2 The informed parental consent described in 92 NAC 51-009.08C1 need not be obtained if the school district or approved cooperative can demonstrate that:

009.08C2a It made reasonable efforts to obtain such consent; and

009.08C2b The child's parent has failed to respond.

009.08D Other Consent Requirements

009.08D1 Parental consent is not required before:

009.08D1a Reviewing existing data as part of an evaluation or a reevaluation; or

009.08D1b Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

009.08D2 A school district or approved cooperative may not use a parent's refusal to consent to one service or activity under 92 NAC 51-009.08A, 92 NAC 51-009.08B or 92 NAC 51-009.08C to deny the parent or child any other service, benefit, or activity of the school district or approved cooperative, except as required by this Chapter.

009.08D3 If a parent of a child who is home schooled or placed in a nonpublic school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district or approved cooperative may not use the consent override procedures (described in 92 NAC 51-009.08A5 and 009.08C1); and

009.08D3a The school district or approved cooperative is not required to consider the child as eligible for services under 92 NAC 51-015.

009.08D4 To meet the reasonable efforts requirement in 92 NAC 51-009.08A3, 009.08A4a, 009.08B2, and 009.08C2a, the school district or approved cooperative must document its attempts to obtain parental consent using the procedures in 92

NAC 51-007.06.

009.09 Consent and Insurance (see Section 012.09 for Use of Public Benefits or Insurance)

009.09A Children with Disabilities covered by Public Benefits or Insurance

009.09A1 Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with 92 NAC 51-009.09A2, school districts or approved cooperatives must obtain written, parental consent that:

009.09A1a Meets the requirements of 34 CFR §99.30 (FERPA) and 34 CFR §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under 34 CFR 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance programs (e.g., Medicaid)); and

009.09A1b Specifies that the parent understands and agrees that the school district or approved cooperative may access the parent's or child's public benefits or insurance to pay for services under this Chapter.

009.09A2 Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school district or approved cooperative must provide written notification, consistent with 92 NAC 51-009.05C and 009.05D, to the child's parents, that includes:

009.09A2a A statement of the parental consent provisions in 92 NAC 51-009.09A1a and 009.09A1b of this section;

009.09A2b A statement of the "no cost" provisions in paragraphs 92 NAC 51-012.09B1 through 012.09B3;

009.09A2c A statement that the parents have the right under 34 CFR Part 99 and Part 300 to withdraw their consent to disclosure of their child's personally identifiable

information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

009.09A2d A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and Part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

009.09B Children with Disabilities covered by Private Insurance

009.09B1 With regard to services required to provide FAPE to an eligible child under this Chapter, a school district or approved cooperative may access the parents' private insurance proceeds only if the parents provide consent consistent with 92 NAC 51-003.09.

009.09B2 Each time the school district or approved cooperative proposes to access the parent's private insurance proceeds, the school district or approved cooperative must:

009.09B2a Obtain parental consent in accordance with 92 NAC 51-009.09B1; and

009.09B2b Inform the parents that their refusal to permit the school district or approved cooperative to access their private insurance does not relieve the school district or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

009.10 Appointment of Surrogates

009.10A Each school district or approved cooperative shall ensure that the rights of a child with a disability are protected if:

009.10A1 No parent can be identified;

009.10A2 The school district or approved cooperative, after reasonable efforts, cannot locate a parent;

009.10A3 The child is an unaccompanied homeless youth; or

009.10A4 The child is a ward of the State or court.

009.10A4a In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements in 92 NAC 51-009.10D3.

009.10B The duty of the school district or approved cooperative under 92 NAC 51-009.10A includes the assignment of an individual to act as a surrogate for the parents. This must include a method;

009.10B1 For determining whether a child needs a surrogate parent and,

009.10B2 For assigning a surrogate parent to the child.

009.10C The school district or approved cooperative may select a surrogate parent in any way permitted under State law and the district or approved cooperative shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 calendar days after there is a determination that the child needs a surrogate.

009.10D In order to qualify, a surrogate must be a person who:

009.10D1 Has no personal or professional interest that conflicts with the interest of the child he or she represents;

009.10D2 Has knowledge and skills that ensure adequate representation of the child; and

009.10D3 Is not an employee of any public agency which is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

009.10D3a In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be

appointed as temporary surrogate parents without regard to 92 NAC 51-009.10D3, until a surrogate parent can be appointed that meets all the requirements of 92 NAC 51-009.10D.

009.10E The surrogate may represent the child in all matters relating to:

009.10E1 The identification, evaluation, and educational placement of a child; and

009.10E2 The provision of a free appropriate public education to the child.

009.10F The services of the surrogate parent shall be terminated when:

009.10F1 The child is no longer eligible for a surrogate parent under 92 NAC 51-009.10A;

009.10F2 A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or

009.10F3 The surrogate parent fails to fulfill his or her duties as a surrogate parent.

009.10G Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 92 NAC 55.

009.10H The surrogate parent and the school district or approved cooperative which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

009.11 State Complaint Procedures

009.11A An organization or individual may file a signed written complaint under the procedures described in 92 NAC 51-009.11B.

009.11B The complaint must include:

009.11B1 A statement that the public agency has violated a requirement of 92 NAC 51, 34 CFR 300 or Part B of the IDEA;

009.11B2 The facts on which the statement is based;

009.11B3 The signature and contact information for the complainant; and

009.11B4 If alleging violations with respect to a specific child □

009.11B4a The name and address of the residence of the child;

009.11B4b The name of the school the child is attending;

009.11B4c In the case of a homeless child or youth within the meaning of section 725(2C) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

009.11B4d A description of the nature of the problem of the child, including facts relating to the problem; and

009.11B4e A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

009.11B5 The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 92 NAC 51-009.11.

009.11B6 The party filing the complaint must forward a copy of the complaint to the school district or approved cooperative serving the child at the same time the party files the complaint with Nebraska Department of Education Office of Special Education.

009.11C If a complaint meeting the requirements of 92 NAC 51-009.11B is received, the following procedures will be carried out:

009.11C1 Within fourteen (14) calendar days of receipt of the written, signed complaint, an assigned Office of Special Education official shall notify in writing each complainant and the school district or approved cooperative against which the violation has been alleged, that the complaint has been

received. This written notification shall include a copy of the complaint and the substance of the alleged violation. The school district or approved cooperative shall have fourteen (14) calendar days to submit a written response.

009.11C2 Office of Special Education officials will provide the school district or approved cooperative with the opportunity to respond to the complaint, including, at a minimum:

009.11C2a At the discretion of the school district or approved cooperative, a proposal to resolve the complaint; and

009.11C2b An opportunity for a parent who has filed a complaint and the school district or approved cooperative to voluntarily engage in mediation consistent with 92 NAC 51-009.12.

009.11C3 Office of Special Education officials will investigate each complaint received from an individual or organization (including an individual or organization from another state) to determine whether there has been a failure to comply with this Chapter and may require further written or oral submission of information by all parties and may conduct an independent on-site investigation if necessary. The complainant will have the opportunity to submit additional information either orally or in writing, about the allegation.

009.11C4 Within sixty (60) calendar days of receipt of a signed written complaint, the Department of Education Office of Special Education will review all relevant information and provide written notification of findings of facts and conclusions and the basis for such findings to all parties involved.

009.11C5 An extension of the time limit in 92 NAC 51-009.11C4 will be permitted only if:

009.11C5a Exceptional circumstances exist with respect to a particular complaint; or

009.11C5b The parent and the school district or approved cooperative involved agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution.

009.11C6 If it is determined there has been a failure to comply, there will be included in the notification of findings the specific steps which must be taken by the school district or approved cooperative to bring the school district or approved cooperative into compliance, including technical assistance, negotiations and corrective actions necessary to achieve compliance. The notification shall also set forth a reasonable period of time to voluntarily comply.

009.11C7 If the school district or approved cooperative does not demonstrate compliance within the period of time set forth in the notice of findings, the matter will be subject to the procedures outlined in 92 NAC 51-004.09.

009.11C8 If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of that hearing, the Office of Special Education officials shall set aside any part of the state complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the state complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 92 NAC 51-009.11.

009.11C9 If an issue is raised in a complaint filed under 92 NAC 51-009.11 that has previously been decided in a due process hearing involving the same parties:

009.11C9a The hearing decision is binding; and

009.11C9b The Nebraska Department of Education must inform the complainant to that effect.

009.11C10 A complaint alleging a school district's or approved cooperative's failure to implement a due process decision must be resolved by the Nebraska Department of Education.

009.12 Mediation

009.12A School districts or approved cooperatives shall implement the procedures established in Section 009 to allow parties to resolve disputes involving any matter arising under this Chapter or Part B of the IDEA ~~described in 92 NAC 51-009.05A1 and 009.05A2~~ including matters arising prior to the filing of a due

process hearing petition or through a mediation process ~~which, at a minimum, shall be available whenever a hearing is requested under 92 NAC 55~~.

009.12A1 The procedures for seeking mediation initiated by either the parent(s) or school district or approved cooperative include:

009.12A1a Contacting the Nebraska Office of Dispute Resolution who will

009.12A1b Arrange a meeting, invite both parties and conduct the mediation in an attempt to resolve the dispute.

009.12B The procedures shall ensure that the mediation process:

009.12B1 Is voluntary on the part of the parties;

009.12B2 Is not used to deny or delay a parent's right to a due process hearing under 92 NAC 55, or to deny any other rights afforded under this Chapter; and

009.12B3 Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

009.12C The school district or approved cooperative may implement the procedures in Section 009 to offer parents and schools or approved cooperatives that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with:

009.12C1 A parent training and information center or community parent resource center in this State established under Section 671 or 672 of the IDEA, or

009.12C2 An appropriate alternative dispute resolution entity to encourage the use, and explain the benefits of the mediation process to the parents.

009.12D The Nebraska Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education

and related services for use by school districts, approved cooperatives, and parents.

009.12E The Nebraska Department of Education shall bear the cost of the mediation process, including the costs of meetings described in 92 NAC 51-009.12C.

009.12F Each session in a mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

009.12G In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:

009.12G1 States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

009.12G2 Is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

009.12G3 Is enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.12H Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court of a state receiving assistance under Part B of the IDEA as amended in 2004.

009.12I An individual who serves as a mediator under this Chapter:

009.12I1 May not be an employee of:

009.12I1a The Nebraska Department of Education or of the school district or approved cooperative that is involved in the education or care of the child; or

009.12I1b An agency that is providing direct services to a child who is the subject of the mediation process; and

009.12I1c Must not have a personal or professional interest that conflicts with the person's objectivity.

009.12I2 A person who otherwise qualifies as a mediator is not an employee of a school district or approved cooperative or the Nebraska Department of Education solely because he or she is paid by the agency to serve as a mediator.

009.13 Resolution Process

009.13A Resolution Meeting

009.13A1 Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 92 NAC 55, the school district or approved cooperative must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

009.13A1a Includes a representative of the school district or approved cooperative who has decision-making authority on behalf of that school district or approved cooperative; and

009.13A1b May not include an attorney to the school district or approved cooperative unless the parent is accompanied by an attorney.

009.13A2 The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district or approved cooperative has the opportunity to resolve the dispute that is the basis for the due process complaint.

009.13A3 The meeting described in 92 NAC 51-009.13A1 and 009.13A2 need not be held if:

009.13A3a The parent and the school district or approved cooperative agree in writing to waive the meeting; or

009.13A3b The parent and the school district or approved cooperative agree to use the mediation process described in 92 NAC 51-009.12.

009.13A4 The parent and the school district or approved cooperative determine the relevant members of the IEP team to attend the meetings.

009.13B Resolution Period

009.13B1 If the school district or approved cooperative has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

009.13B2 Except as provided in this section, the timeline for issuing a final decision begins at the expiration of this 30-day period.

009.13B3 Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding 92 NAC 51-009.13B1 and 009.13B2, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

009.13B4 If the school district or approved cooperative is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 92 NAC 51-007.06D), the school district or approved cooperative may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

009.13B5 If the school district or approved cooperative fails to hold the resolution meeting specified in 92 NAC 51-009.13A within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

009.13C Adjustments to the 30-day Resolution Period

009.13C1 The 45-day timeline for the due process hearing starts the day after one of the following events:

009.13C1a Both parties agree in writing to waive the

resolution meeting;

009.13C1b After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

009.13C1c If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parties or the school district or approved cooperative withdraws from the mediation process.

009.13D Written Settlement Agreement

009.13D1 If a resolution to the dispute is reached at the meeting described in 92 NAC 51-009.13A1 and 009.13A2, the parties must execute a legally binding agreement that is:

009.13D1a Signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind the school district or approved cooperative; and

009.13D1b Enforceable in any State court of competent jurisdiction or in a district court of the United States.

009.13E Agreement Review Period

009.13E1 If the parties execute an agreement pursuant to 92 NAC 51-009.13D, a party may void the agreement within 3 business days of the agreement s execution.

009.14 Special Education Due Process Hearings

009.14A Whenever a due process complaint has been received under 92 NAC 55 or Section 016 of this Chapter, the parents or the school district or approved cooperative shall have an opportunity for an impartial due process hearing consistent with the procedures in 92 NAC 55 and 92 NAC 51-009.13.

009.14B A parent or a school district or approved cooperative may initiate a hearing on any of the matters described in 92 NAC 51-009.05A relating to the identification, evaluation or educational placement of the child with a disability, or the provision of FAPE to the child by filing a petition pursuant to 92 NAC 55.

009.14C When a hearing is initiated under 92 NAC 55, the school district or approved cooperative shall inform the parents of the availability of mediation described in 92 NAC 51-009.12.

009.14D The school district or approved cooperative shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if the parent or the school district or approved cooperative initiates a hearing under 92 NAC 55.

009.14E Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

010 Qualifications of Special Education Personnel for Program Approval and Reimbursement

010.01 School districts and approved cooperatives shall ensure that all personnel necessary to carry out this Chapter are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965.

010.01A Instructional personnel shall hold valid Nebraska Department of Education certification, be endorsed in the assigned area. Instructional personnel may serve children with visual impairments and children with hearing impairments in a multicategorical program if the instructional personnel have attended training approved by the Department of Education or have received consultation from an individual endorsed in the area of visual hearing impairments. This section does not apply to individuals providing inservice.

010.01B Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school shall be a teacher meeting IDEA 2004 criteria as defined in 92 NAC 51-003.62.

010.01C School districts or approved cooperatives shall take measurable steps to recruit, hire, train, and retain teachers meeting IDEA 2004 criteria to provide special education and related services.

010.01C1 School districts and approved cooperatives shall make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the IDEA.

010.01D Approvable endorsements for program approval and reimbursement shall include:

	Categorical Assignment	**NDE Approvable Endorsement**
010.01D1	Adaptive Physical Education	Adaptive Physical Education
010.01D2	Autism	Special Education Functional Academic Skills and Independent Living Specialist Special Education Special Education Inclusion and Collaboration Specialist Special Education Behavior Intervention Specialist Speech-Language Pathologist
010.01D3	Emotional Disturbance	Special Education Behavior Intervention Specialist Special Education
010.01D4	Deaf-Blindness	Special Education Visual Impairment Special Education Functional Academic Skills and Independent Living Specialist

010.01D5	Diagnostic Services	School Psychologist Audiologist Speech-Language Pathologist or any special education endorsement
010.01D6	Early Childhood Special Education in Home and Centerbased Programs for Children Birth-Age Five	Early Childhood plus any Special Education Early Childhood Inclusive Special Education Early Childhood Special Education Special Education Early Intervention Specialist
010.01D7	Hearing Impairments	Deaf or Hard of Hearing
010.01D8	Home (School Age) and Hospital (Birth to 21) Services	Any Teaching endorsement
010.01D9	Home-School Liaison	Any special education endorsement School Counselor
010.01D10	Intellectual Disability	Special Education
010.01D11	Multicategorical Programs	Instructional personnel serving students in a multicategorical program shall be considered to be endorsed in the assigned area if an endorsement is held in at least one of the disability categories served

010.01D12	Multiple Disabilities	Special Education Functional Academic Skills and Independent Living Specialist
010.01D13	Orthopedic Impairments	Special Education
010.01D14	Program Supervision	Administrative or Supervisory certificate and at least one Special Education endorsement or any Special Education Administrative or Supervisory certificate
010.01D15	Learning Disabilities	Special Education Inclusion and Collaboration Specialist Special Education
010.01D16	Speech-Language Impairments	Speech-Language Pathologist
010.01D17	Substitute Teacher	Any Teaching certificate
010.01D18	Traumatic Brain Injury	Special Education Functional Academic Skills and Independent Living Specialist Special Education Special Education Behavior Intervention Specialist Speech-Language Pathologist Special Education Inclusion and Collaboration Specialist
010.01D19	Visual Impairment	Special Education Visual Impairment

010.01D20	Work Study Program or Transition Program	Any special education endorsement School Counselor Vocational Special Needs Cooperative Education Diversified Occupations Secondary Transition Specialist

010.02 For purposes of 92 NAC 51-010.01D5, 010.01D14 and 010.01D20 special education endorsement shall include any approvable endorsement under 92 NAC 51-010.01D except 010.01D8, 010.01D17 and excluding the specific endorsements of guidance and counseling, educational audiologist, vocational special needs, cooperative education diversified occupations and special services certificate for school transition specialist.

010.03 Related Services Personnel and Paraprofessionals

010.03A Related services personnel and paraprofessionals shall hold any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

010.03B Related services personnel who deliver services in their discipline or profession shall not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

010.03C Paraprofessionals shall be appropriately trained and supervised by qualified special education personnel to be used to assist in the provision of special education and related services under this Chapter.

010.03D A paraprofessional shall not teach, as defined in Neb. Rev. Stat. §79-101.12.

010.04 Personnel providing special education services who do not hold Department of Education certification and endorsement, shall be licensed by the appropriate State of Nebraska Board of Examiners.

010.05 Personnel employed by approved service agencies shall be certified by the Department of Education or shall hold the credential or training required by the licensing standard under which the service providers operate.

010.06 Qualified Educational Sign Language Interpreters

010.06A In order to be a qualified educational sign language interpreter for the purposes of 92 NAC 51-010.06, an individual must have a high school diploma, high school equivalency diploma or higher, and meet the requirements of 92 NAC 51-010.06A1 or 010.06A2:

010.06A1 Receive a passing score on the EIPA written exam, and attain and maintain one or more of the following competency levels as measured by the following assessments:

010.06A1a Educational Interpreter Performance Assessment (EIPA), Competency level 4.0 or above

010.06A1b Registry of Interpreters of the Deaf Certification (RID)

010.06A1c National Association of the Deaf (NAD) Competency level 4.0 or above

010.06A1d National Interpreter Certification (NIC)

010.06A1e Quality Assurance Screening Test (QAST) Competency level 4.0

010.06A2 Educational interpreters providing sign language interpreter services in a school district or approved cooperative for two consecutive school years immediately prior to the effective date of this Rule shall be considered qualified educational sign language interpreters if:

010.06A2a the individual has attained a competency level of 3.5 or higher on the EIPA, and

010.06A2b the individual has met the requirements of 92 NAC 51-010.06F.

010.06B Subject to the exceptions in 92 NAC 51-010.06C, and

010.06D, school districts and approved cooperatives shall ensure that all sign language interpreters employed by such school districts or approved cooperatives to provide special education services are qualified educational sign language interpreters who meet the competency requirements in 92 NAC 51-010.06A.

010.06C If the school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ for up to one year an interpreter who has received a Skills at or above the required level or a Hire with Caution on the EIPA pre-hire screening.

010.06D If a school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ ~~for up to two school years,~~ an interpreter who demonstrates the minimum competency level of 3.0 on the EIPA, NAD or QAST. The school district or approved cooperative must require that the interpreter participate in a professional development plan designed to improve his or her skills and enable him or her to become a qualified educational sign language interpreter ~~within two school years~~. The plan shall include at least 40 clock hours of training in interpreting per year (August 1 to July 31). The plan shall be approved by the Regional Program State Coordinator ~~school district or approved cooperative~~. The Regional Program State Coordinator and the school district or approved cooperative must monitor completion of the professional development plan~~require that the interpreter attain one or more of the competency levels in 92 NAC 51-010.06A within two school years of employment~~.

010.06E If an interpreter does not complete the requirements ~~achieve the required competency levels within the time periods as~~ specified in 92 NAC 51-010.06D, the school district or approved cooperative must reopen the position and seek a qualified educational sign language interpreter.

010.06F School districts and approved cooperatives shall require that all sign language interpreters employed by the school districts or approved cooperatives to deliver special education services submit evidence to the school district or approved cooperative of having obtained 24 clock hours of professional development every two years (August 1-July 31). This should include at least 18 hours

of training related to sign language interpreting. The remaining six hours of training can be in any of the following areas: history, psychology and sociology of the Deaf and hard of hearing; child development; language development; curriculum development; methods of instruction; interpreting for students who are deaf-blind; legal and ethical issues for educational interpreters.

010.06G If a sign language interpreter cannot provide the evidence required in 92 NAC 51-010.06F of the professional development, the school district or approved cooperative shall require that the sign language interpreter be retested and achieve the applicable competency level specified in 92 NAC 51-010.06A, 010.06C, or 010.06D.

010.07 Notwithstanding any other individual right of action that a parent or student may maintain under this Chapter, nothing in this section or Chapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to meet IDEA 2004 criteria or to prevent a parent from filing a complaint about staff qualification pursuant to Section 009 of this Chapter.

011 School District Budget Development and Reimbursement Process for School Age Programs

011.01 General Information

011.01A The special education assurances and flexible funding application of a school district and approved cooperative shall be submitted electronically via the NDE website to the Office of Special Education. Any amendment to the assurances and flexible funding application shall be subject to the same review as the initial assurances and flexible funding application.

011.01A1 The fiscal year for school age special education programs shall be September 1 to August 31.

011.01B The allowable and reimbursable costs for special education services are restricted to the following items, which shall be documented and are subject to audit;

011.01B1 Salaries of special education personnel as per 92 NAC 51-010 and clerical personnel directly associated with special education services;

011.01B2 School district or approved cooperative share of fringe benefits for the special education staff:

011.01B2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability, and unemployment insurance.

011.01B3 Inservice costs directly related to the special education programs provided that:

011.01B3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with a disability and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

011.01B3b Allowable costs include: presenter fees and expenses; mileage; board and room of staff to attend inservice programs; costs of substitutes for staff attending inservice programs; cost of inservice programs which directly assist special and regular educators in providing appropriate programs for children with a verified disability in their classrooms; and costs of special education workshop attendance.

011.01B3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable reimbursable expense.

011.01B4 Travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

011.01B4a Children attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services; and

011.01B4b Children who are assigned to more than one attendance center to receive special education.

011.01B5 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process.

011.01B6 Costs of transporting children with a disability which are authorized under Neb. Rev. Stat. §79-1129 and Section 014 are budgeted and claimed separately;

011.01B7 Instructional equipment including assistive technology devices and equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) are allowable reimbursable costs under this Chapter. The equipment, supplies, and publications shall be used by the child in association with the implementation of the child's IEP or evaluation. This shall also include equipment, supplies, and publications used by staff when instructing a child with a verified disability; when evaluating a child who is suspected of having a disability; or when reevaluating a child with a verified disability. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include equipment, supplies, and publications used by staff for administrative purposes. This shall not include personal equipment and supplies or life support equipment. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

011.01B8 Those contracted special education services in which children with a disability are served by a service agency whose special education programs and rates have been approved by the Department of Education; and

011.01B9 Costs of acquisition (purchase, lease, lease-purchase), renovation and operation of a mobile unit(s) (i.e., trailers, mobile homes, vans, or any combination thereof) used, or to be used, as mobile learning centers for delivery of special education services to any eligible children with a disability. Reimbursement shall be subject to approval by the

Nebraska Department of Education and shall be based on allowable depreciation and reimbursement as per Section 014.

011.01B9a The maximum number of mobile units a school district or approved cooperative may purchase shall be based on the total enrollment of both public and nonpublic schools as per the following schedule:

011.01B9a(1) 1 to 10,000 total enrollment for the maximum purchase of one (1) mobile unit;

011.01B9a(2) 10,001 to 20,000 total enrollment for the maximum purchase of two (2) mobile units;

011.01B9a(3) 20,001 to 30,000 total enrollment for the maximum purchase of three (3) mobile units;

011.01B9a(4) 30,001 to 40,000 total enrollment for the maximum purchase of four (4) mobile units;

011.01B9a(5) 40,001 to 50,000 total enrollment for the maximum purchase of five (5) mobile units; and

011.01B9a(6) all districts with an enrollment exceeding 50,001 for the maximum purchase of six (6) mobile units.

011.01B10 Costs for support services, as defined in Neb. Rev. Stat. §79-1125.01 and 92 NAC 51-003.60, identified in 92 NAC 51-011.05 as the Flexible Funding Option.

011.01C The adjusted average per pupil cost of the preceding year or a portion of that cost shall be calculated according to the following criteria:

011.01C1 For Level I special education services the school district is considered to have expended its adjusted average per pupil cost for each child with a disability who participates in a special education support service(s) for an aggregate of not more than three hours per week.

011.01C2 For Level II special education classroom services in which a child with a disability participates more than an

aggregate of three hours per week, the school district shall pay that portion of the adjusted average per pupil cost for that portion of the instructional time devoted to the special education activity;

011.01C3 For Level III special education contractual services the school district shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year to the agency providing the educational program for each child with a disability. In deriving allowable excess cost, the district shall deduct its adjusted average per pupil cost from the cost of the program contracted from the service agency;

011.01C4 When a school district or approved cooperative provides or contracts for a summer school special education program for a child with a verified disability, the cost of such program will be considered for allowable excess cost reimbursement if the child's needs for such program can be verified by review of the IEP.

011.01D Student Special Education Full Time Equivalency (FTE) shall be determined by calculating the percent of aggregate time a child receives special education and related services. In calculating student special education full-time equivalency, time spent in transportation, extended school day and extended school year services are excluded from the aggregate time.

011.01D1 The aggregate amount of a child's special education FTE includes:

011.01D1a The amount of time the child spends in a separate setting other than the regular classroom; and

011.01D1b The amount of time the child with a disability spends in the regular classroom receiving instruction as indicated in the child's IEP from special education staff.

011.01D2 Full-time equivalency (FTE) is calculated each year.

011.02 General Limitation in Budget Development

011.02A Only children with verified disabilities shall receive special education services. This shall include the initial evaluation of a child

with a suspected disability, regardless of the outcome of the verification decision. (See Section 006.) Budget development may also include those children receiving support services as defined in 92 NAC 51-003.60.

011.02B Age limits

011.02B1 School age budgets shall be limited to those children with disabilities from age five through the school year in which the child reaches age twenty-one and those children receiving support services as defined in 92 NAC 51-003.60.

011.02B2 A child is age five if that child has reached the age of five years or will reach such an age on or before July 31 of the current school year.

011.02B3 A school district or approved cooperative is eligible for reimbursement for a child□s special education program until the end of the school year in which his or her twenty-first birthday occurs.

011.02C Administration and Supervision

011.02C1 Supervision of special education programs is an allowable expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable school age program costs, minus the cost of program supervision. Administration and supervision includes clerical costs directly associated with the supervision of special education programs.

011.02C2 The cost of a superintendent or principal, hired for the purpose of supervising general education, shall not be included in allowable excess cost for special education.

011.02D Related services for a child with a verified disability are reimbursable if the services are listed in the IEP and are necessary for the achievement of educational goals as stated in the IEP.

011.02E Any program that provides residential care shall show the costs of such care separately from the costs of the education program. (See 92 NAC 53.)

011.03 Budget Development for Levels I, II, III

011.03A Level I Special Education Services

011.03A1 The expenditures for Level I (not more than an aggregate of three hours per child per week) special education service programs shall be considered for allowable excess cost reimbursement under the following conditions:

011.03A1a The programs are owned and operated by the school district or approved cooperative and the expenditures are within the allowable categories as stated in Section 011; and

011.03A1b The reimbursement to a school district or approved cooperative contracting for Level I services shall be limited to the rates approved by Commissioner or designee.

011.03B Level II Special Education Services

011.03B1 The expenditures for Level II (more than an aggregate of three hours per child per week) special education services shall be considered for allowable excess cost reimbursement under the following conditions:

011.03B1a The school district or approved cooperative has documented and contributed the portion (total or prorated amount for a full day program) of the adjusted average per pupil cost into the program; and

011.03B1b The expenditures are within the allowable categories as stated in Section 011.

011.03C Level III Special Education Contractual Services

011.03C1 The school district or approved cooperative may contract for any or all special education programs with approved service agencies.

011.03C1a Those school districts or approved cooperatives contracting for services shall have the service agency specify the cost for each service being provided by the service agency. Reimbursement to such school districts or approved cooperatives shall be limited to the NDE approved rates and the amount of time such services

were provided to children with verified disabilities.

011.04 Final Financial Reports

011.04A General Procedures

011.04A1 Excess cost shall mean the difference between (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of children (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the resident school district of each child for the preceding year.

011.04A2 Each school district shall determine an adjusted average per pupil cost.

011.04A2a The adjusted average per pupil cost is to be determined by subtracting those eligible special education expenditures which were included as costs from the total instructional expenditures shown on the Total Instruction line of the district's Annual Financial Report for the previous school year. Divide the result by the total ADM (Average Daily Membership) as reported in the Annual Financial Report for the same year.

011.04B Payments

011.04B1 Payments shall be made by the Nebraska Department of Education to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Additional payments may be made based upon additional valid claims submitted. Such payments will be based upon the final financial reports submitted on forms or in a manner prescribed by the Office of Special Education which shall include the following:

011.04B1a Allowable expenditures for the preceding school fiscal year including any costs for the Flexible Funding Option.

011.04B1b A list of all special education personnel and their FTE;

011.04B1c Tuition received from contracts and other sources;

011.04B1d Certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid;

011.04B1e A copy of the billings from the service agencies for contracted programs; and

011.04B1f Student Special Education Full Time Equivalency as defined by 92 NAC 51-011.01D for Level II and Level III students.

011.04B2 Such final financial reports shall be submitted electronically via the NDE website to the Department of Education on or before October 31 of each year for the preceding school fiscal year.

011.04B3 A school district or approved cooperative reimbursed for ineligible expenditures, shall be required to return to the Department of Education the amount determined to be ineligible or the amount shall be deducted from subsequent special education payments.

011.04B4 The Department of Education shall withhold any reimbursement provided under Neb. Rev. Stat. §79-1142, to school districts or approved cooperatives which, after final determination by the Department of Education, received funds in excess of the determined allocation for the previous year. Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

011.04B5 Supplementary amendments to any school age final financial report previously approved by the Office of Special Education may be submitted to the Office of Special Education for review and approval within three years of the original due date. Approved amendments may be submitted by the Department of Education to the Legislature for consideration of a supplemental appropriation.

011.04C Determination and Scheduling of Payments

011.04C1 For special education and support services provided, the Nebraska Department of Education shall reimburse each school district in the following school fiscal year a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature and based on allowable excess costs for all special education programs and support services. Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this subsection if such cooperatives or educational service units have complied with the reporting and approval requirements of Neb. Rev. Stat. §79-1155 for cooperative programs which were offered the preceding year.

011.04C2 The amount appropriated by the Legislature for special education programs including support services (Flexible Funding Option) shall be the basis for reimbursement. Payments authorized by Neb. Rev. Stat. §79-1142 shall be made only to a school district or approved cooperative.

011.04C3 Whenever there are due dates specified in this Chapter for submission of required documents, the appropriate items shall be submitted to the Department of Education, Office of Special Education on those dates.

011.04C4 All reports required by this Chapter for submission by school districts and approved cooperatives shall be made in accordance with 92 NAC 51-011.04C3. Failure to do so will result in the implementation of the procedures specified in 92 NAC 51-004.14.

011.05 Flexible Funding projects are optional for school districts or approved cooperatives and are intended for students not identified or verified for special education services but who demonstrate a need in the general curriculum. A school district or approved cooperative choosing to exercise the Flexible Funding Option must submit an application containing a narrative and proposed budget. Proposals shall be submitted electronically via the NDE website to the Nebraska Department of Education, Office of Special Education.

011.05A As part of the Flexible Funding Option Application, the

narrative shall describe the support services designed for the targeted student subgroup who would benefit from preventative support services within the context of the general curriculum. The narrative must include:

011.05A1 An estimate of the annual number of students to be served;

011.05A2 The process(es) used in identifying the intended target student subgroup;

011.05A3 Methodology to be used including but not limited to:

011.05A3a The strategies and interventions to be applied;

011.05A3b The staff development activities to be funded for carrying out activities described in the proposal;

011.05A3c The intended student outcomes resulting from implementation;

011.05A3d How the proposed services are different from services currently available to the targeted student subgroup;

011.05A3e The proposed annual measurements that will be used to document changes in student performance; and

011.05A3f If the proposal is linked to school district or building level school improvement activities, information describing the relationship to the School Improvement Action Plan; and

011.05A4 The name of the person(s) responsible for proposal implementation as well as a mailing address, e-mail, fax and phone number.

011.05B Flexible Funding Option Reimbursement

011.05B1 Reimbursement for support services as defined in 92 NAC 51-003.60 shall be limited to a percentage established by the State Board of Education not to exceed ten percent of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and

support services.

011.05B2 Costs shall be limited to allowable costs as defined in Section 011 and the cost of salary and fringe benefits of general education staff providing support services.

011.05B3 Payments will be based upon the costs reported in the Final Financial Report and contingent upon completion and approval of a final report containing actual project costs and a report of student progress including the requirements of 92 NAC 51-012.07D. Payments will be made at the same percentage rate as for all special education reimbursement.

011.05C The fiscal year for the Flex Funding Option shall be September 1 to August 31.

011.06 Ward of the State or Court With a Disability

011.06A When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. §83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the Nebraska Department of Education and such institution is not owned or operated by the district in which the student resided at the time the student became a ward, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the Nebraska Department of Health and Human Services under rules and regulations prescribed by the Department of Health and Human Services and the student remains a resident of the district in which the student resided at the time he or she became a ward. Any student who is a ward of the state or court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. §83-108.04 is a resident of the district in which the student resided at the time the student became a foster child, unless it is determined under Neb. Rev. Stat. §§43-1311 or 43-1312 that the student will not attend such district in which case the student shall be deemed a resident of the district in which the foster family home or foster family is located and shall be

claimed in the final financial report of the school district or approved cooperative in which the foster family home or foster home is located.

012 School District or Approved Cooperative Application and Payment Process for IDEA Flow-Through Allocations

012.01 General Information

012.01A Except for purposes specified in 92 NAC 51-012.07A and 92 NAC 51-015.03C1b, IDEA allocations are to be used by school districts or approved cooperatives in accordance with state requirements necessary to provide a free appropriate public education to children with disabilities.

012.01B The Special Education Assurances and IDEA Consolidated Application of a school district and approved cooperative shall be submitted electronically via the NDE website to the Office of Special Education. Any amendments in the Assurances and Application shall be subject to the same review as the initial Assurances and Application.

012.01C Maintenance of Effort

012.01C1 A school district or approved cooperative may not use IDEA flow-through funds to reduce the level of expenditures below the preceding year□s special education expenditures.

012.01C2 A school district or approved cooperative may use up to 50% of the amount received under IDEA that exceeds the amount received under IDEA the previous year to assist with meeting maintenance of effort.

012.01C3 Exceptions for a school district or approved cooperative not meeting IDEA maintenance of efforts requirements as per federal regulations are:

012.01C3a The school district or approved cooperative has reduced special education personnel costs because staff has been replaced with qualified staff earning lower salaries;

012.01C3b The school district or approved cooperative

has a decrease in enrollment of children with disabilities;

012.01C3c The school district or approved cooperative is no longer responsible for a high cost needs child(ren) with a disability; and

012.01C3d The school district or approved cooperative has terminated a long-term special education purchase(s).

012.01D Notice and Opportunity for a Hearing Before Disapproval of an Application for IDEA Flow-through Allocations

012.01D1 The Nebraska Department of Education will provide an opportunity for a hearing prior to disapproving an application for special education funds for failure of the application to meet the requirements of the Individuals with Disabilities Education Act and its implementing regulations.

012.01D2 The school district or approved cooperative shall request a hearing in writing within 30 calendar days of receipt of the notice provided indicating that the Office of Special Education intends to recommend disapproval of the school district's or approved cooperative's application. Within 30 days after it receives a request, the Nebraska Department of Education shall hold a hearing on the record and shall review its decision.

012.01D3 Not later than 10 days after the hearing, the Nebraska Department of Education shall issue a written ruling, including the findings of fact and reasons for the ruling.

012.01D4 If the Nebraska Department of Education finds the proposed disapproval of the school district's or approved cooperative's application was contrary to the Individuals with Disabilities Education Act and its implementing regulations or the Nebraska Special Education Act and its implementing regulations, the Department shall approve the application.

012.01D5 If the Nebraska Department of Education disapproves the school district's or approved cooperative's application, the school district or approved cooperative may appeal to the U.S. Secretary of Education. The school district or approved cooperative shall file a notice for appeal within 20

days after the school district or approved cooperative has been notified by the Nebraska Department of Education of the results of the hearing. If supported by substantial evidence, the findings of the Nebraska Department of Education shall be final.

012.01D6 The Nebraska Department of Education will make available at reasonable times and places all records of the Department pertaining to any review or appeal the school district is conducting under 34 CFR 76.401 including records of other school districts or approved cooperatives.

012.02 IDEA Base Flow-through Allocation

012.02A First priority for use of the school district or approved cooperative IDEA base flow-through allocation is early childhood special education (Below Age Five programs and transportation).

012.02A1 IDEA base flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.02B The IDEA base flow-through allocation is distributed to school districts or approved cooperatives based on federal regulations implementing Part B of the IDEA.

012.02C The fiscal year for early childhood special education programs shall be September 1 to August 31.

012.03 The following additional reports shall be submitted to the Nebraska Department of Education for early childhood special education (Below Age Five):

012.03A Final Financial Reports

012.03A1 The Nebraska Department of Education shall make payments to school districts and approved cooperatives based on an approved IDEA Application and requests for payments submitted and supported with documentation. If applicable, a supplemental final grant payment will be made to qualifying school districts based on the Below Age Five final financial reports submitted to the Nebraska Department of Education which shall include the following:

012.03A1a Allowable expenditures for the appropriate school fiscal year;

012.03A1b A list of all special education staff and their FTE;

012.03A1c Tuition received from contracts and other sources;

012.03A1d Certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid; and

012.03A1e A copy of the billings from the service agencies for contracted programs.

012.03A2 Final financial reports shall be submitted to the Nebraska Department of Education on or before October 1 of each year for the preceding fiscal year.

012.03A3 A school district or approved cooperative paid for ineligible expenditures shall be required to return to the Nebraska Department of Education the amount determined to be ineligible; repayment of funds equal to the amount determined to be ineligible shall be made with non-federal funds and in no case may federal funds be used to refund the amount found to be misspent or misapplied.

012.03A4 The Nebraska Department of Education shall withhold any payments provided under Neb. Rev. Stat. §79-1132 to school districts or approved cooperatives which, after final determination, received funds in excess of the appropriate allocation for the previous year(s). Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

012.03A5 Allowable costs incurred for children with disabilities below age five shall be considered as total excess cost. The Nebraska Department of Education shall provide grants for the costs of the special education programs approved by the Nebraska Department of Education to the school district of

residence for children with disabilities who are less than five years of age. The grants shall be one hundred percent of the costs of such programs and shall continue to be one hundred percent as long as the funding for such grants comes from federal funds. If federal funding pursuant to the Individuals with Disabilities Education Act, Part B and section 619 base flow-through allocation funds are inadequate at any time to pay one hundred percent of the allowable costs of such programs and transportation, the amount of the grant payments provided by the department shall be a pro rata amount as determined by the State Board of Education from appropriations for special education approved by the Legislature and based on such allowable costs for all special education programs and transportation to children with disabilities who are less than five years of age.

012.03A6 The Nebraska Department of Education may make a supplemental payment to a school district or approved cooperative not able to achieve the Department s annually established Below Age Five funding threshold through a combination of IDEA base and enrollment and poverty flow-through allocations. Contingent upon available federal funds, this annual threshold will be at least the same percentage of funding as is available through state general funds for school age services for that year.

012.04 Allowable Costs

012.04A The allowable costs for special education services are restricted to the following items, which shall be documented and are subject to audit:

012.04A1 Salaries of special education personnel as per 92 NAC 51-010 and clerical personnel directly associated with special education programs;

012.04A2 School district or approved cooperative share of fringe benefits for the special education staff;

012.04A2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability, and unemployment insurance.

012.04A3 Inservice costs directly related to the special education programs, provided that;

012.04A3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with disabilities and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

012.04A3b Allowable costs include: presenter fees and expenses, mileage, board and room of staff to attend inservice programs, costs of substitutes for staff attending inservice programs, costs of inservice programs which directly assist regular educators in providing appropriate programs for children with verified disabilities in their classrooms, and costs of special education workshop attendance.

012.04A3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable expense.

012.04A4 Travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

012.04A4a Children attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services.

012.04A4b Children who are assigned to more than one attendance center to receive special education.

012.04A5 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process;

012.04A6 Costs of transporting children with disabilities which

are authorized under Neb. Rev. Stat. §79-1129 and Section 014 are budgeted and claimed separately;

012.04A7 Instructional equipment including assistive technology devices and equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) or IFSP are allowable under this Chapter. The equipment, supplies, and publications shall be used by the child in association with the implementation of the child's IEP, IFSP or evaluation. This shall also include equipment, supplies, and publications used by staff when instructing children with verified disabilities; when evaluating children who are suspected of having disabilities; or when reevaluating children with verified disabilities. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include personal equipment and supplies or life support equipment and supplies. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment;

012.04A8 Those contracted special education services in which children with disabilities are served by a service provider whose special education programs and rates have been approved by the Commissioner of Education or designee;

012.04A9 Facility costs for Below Age Five Programs are limited to plant operations, maintenance, repairs, and lease costs. A total facility square footage cost may also be claimed for facilities owned by the school district or approved cooperative that are being utilized for ECSE programs. When determining square footage costs, expenditures for facility improvements must be excluded;

012.04A10 Utilities; and

012.04A11 Cost for support services as defined in Neb. Rev. Stat. §79-1125.01 and 92 NAC 51-003.59 and identified in 92 NAC 51-011.05 as the Flexible Funding Option.

012.04A11a Allowable support services must meet the requirements of 34 CFR 300.226 (coordinated early

intervening services).

012.05 Program Cost Limitations

012.05A Supervision of early childhood special education programs is allowable as an expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable special education program costs, minus the cost of program supervision. Supervision of early childhood special education programs includes clerical costs associated with supervision of early childhood special education programs; also refer to Supervision of School Age Special Education programs contained in 92 NAC 51-011.02C.

012.05B The cost of a superintendent or a principal, hired for the purpose of supervising general education, shall not be included in costs for below age five and school age special education programs.

012.05C Any IDEA funds remaining after meeting Below Age Five obligations or at the option of the school district or approved cooperative, funds used for Coordinated Early Intervening Services (CEIS) pursuant to 92 NAC 51-012.07A, may be used by the school district or approved cooperative for other allowable costs associated with serving children with disabilities, ages 5 to 21.

012.06 IDEA Enrollment and Poverty Flow-through Allocation

012.06A As per federal regulations, the enrollment and poverty flow-through allocation is distributed to school districts or approved cooperatives as follows:

012.06A1 85% on the basis of the number of children enrolled in public and nonpublic elementary schools and secondary schools within the jurisdiction of the district; and

012.06A2 15% in accordance with the number of children living in poverty within the jurisdiction of the district as determined by the Nebraska Department of Education.

012.06B A combination of IDEA base and IDEA Enrollment and Poverty allocations will be used by school districts or approved cooperatives to achieve the annual threshold as specified in 92 NAC 51-012.03A6.

012.06C Funds may be used to supplement school age and below age five special education allowable costs not covered by state or federal payments (Refer to 92 NAC 51-012.04 and 012.05).

012.06C1 School districts or approved cooperatives shall complete an annual application and following approval by the Nebraska Department of Education, the school district or approved cooperative may request payment for reimbursement of allowable special education expenditures.

012.06C2 School districts or approved cooperatives may receive funding by submitting requests for payment to NDE supported with documentation.

012.06C3 Funds shall be used only to pay the excess cost of providing special education and related services to children with disabilities except for purposes specified in 92 NAC 51-012.07A, and shall be used to supplement State, local and other federal funds and not to supplant such funds.

012.06C3a For purposes of 92 NAC 51-012, school district or approved cooperative eligibility for IDEA funds is determined by annually calculating separately both an elementary and secondary average per pupil expenditure (APPE).

012.06C3b A school district or approved cooperative meets the IDEA excess cost requirement if it has spent at least a minimum average elementary or secondary amount (APPE) for the education of its children with disabilities before funds under Part B are used.

012.06C4 Minor building modifications are allowable costs if approved through the Enrollment/Poverty Supplemental application process.

012.06C5 When expenditures are for resources benefiting all children, costs attributed to IDEA shall be on a pro rata basis.

012.06C6 IDEA Enrollment and Poverty flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.06D An educational service unit, cooperative, or regional

planning entity recognized by the State Board of Education pursuant to Neb. Rev. Stat. §79-1135 may receive grant funding if a school district or approved cooperative authorizes through a signed certification the release of all or a portion of the school district or approved cooperative IDEA allocation to said entity.

012.07 Special Considerations

012.07A Except as provided in 34 CFR 300.646 provision of IDEA Coordinated Early Intervening Services (CEIS) are voluntary for school districts and approved cooperatives receiving an IDEA allocation. Such services are limited to 15% of the school district or approved cooperative yearly IDEA allocations and are to be designed for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

012.07B When implementing IDEA CEIS, a school district may carry out activities that include:

012.07B1 Professional development (which may be provided by entities other than a school district or approved cooperative) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

012.07B2 Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

012.07C Each school district or approved cooperative that develops and maintains CEIS shall annually report the following information to the Department of Education:

012.07C1 The number of students served; and

012.07C2 The number of students served who subsequently receive special education and related services during the preceding two year period.

012.07D Payments for CEIS shall be contingent upon meeting the reporting requirements of 92 NAC 51-012.07C.

012.07D1 Payments for CEIS will be made according to 92 NAC 51-012.06C2.

012.07E Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under 92 NAC Rule 51.

012.07F Related services for children with verified disabilities are allowable if the services are listed in the IEP and are required to assist the child to benefit from his/her special education program.

012.07G Payments to a school district or approved cooperative contracting for special education services shall be limited to rates approved by the Commissioner of Education or designee.

012.07H Late submission of required forms will be subject to the procedures specified in 92 NAC 51-004.14.

012.08 Expenditures for Parentally-Placed Nonpublic School Children

012.08A To meet the requirement of 92 NAC 51-015.03C, each school district or approved cooperative must spend at least the following on providing special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities:

012.08A1 For children aged 3 through 21, an amount that is the same proportion of the school district's or approved cooperative's total subgrant under section 611(f) of the IDEA as the number of nonpublic school children with disabilities aged 3 through 21 who are enrolled by their parents in nonpublic including religious, elementary schools and secondary schools located in the school district served by the school district or approved cooperative is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

012.08A2 For children aged three through five, an amount that is the same proportion of the school district or approved cooperative's total subgrant under section 619(g) of the IDEA as the number of parentally-placed nonpublic school children with disabilities aged three through five who are enrolled by

their parents in a nonpublic, including religious, elementary school located in the school district served by the school district or approved cooperative, is to the total number of children with disabilities in its jurisdiction aged three through five.

012.08A2a Children aged three through five are considered to be parentally-placed nonpublic school children with disabilities enrolled by their parents in nonpublic, including religious, elementary schools, if they are enrolled in a nonpublic school that meets the definition of elementary school in section 34 CFR 300.13.

012.08B If a school district or approved cooperative has not expended all of the funds described in 92 NAC 51-012.08A1 and 012.08A2 by the end of the fiscal year for which Congress appropriated the funds, the school district or approved cooperative must obligate the remaining funds for special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities during a carry-over period of one additional year.

012.08C In calculating the proportionate amount of Federal funds to be provided for parentally-placed nonpublic school children with disabilities, the school district or approved cooperative, after timely and meaningful consultation with representatives of nonpublic schools under 92 NAC 51-015.03D, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending nonpublic schools located in the school district or approved cooperative.

012.08D Each school district or approved cooperative must, after timely and meaningful consultation with representatives of parentally-placed nonpublic school children with disabilities (consistent with 92 NAC 51-015.03D) determine the number of parentally-placed nonpublic school children with disabilities attending nonpublic schools located in the school district or approved cooperative. The count is conducted on December 1 of each year.

012.08D1 The count must be used to determine the amount that the school district or approved cooperative must spend on providing special education and related services to parentally-placed nonpublic school children with disabilities in the next

subsequent fiscal year.

012.08E State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed nonpublic school children with disabilities under this Chapter.

012.08F Eligible school districts and approved cooperatives shall submit a budget and narrative for serving nonpublic school children as part of an approved IDEA Consolidated Application.

012.08F1 Requests for payments may be submitted to NDE with supporting documentation.

012.09 Children with Disabilities Who Are Covered by Public Benefits or Insurance

012.09A A school district or approved cooperative may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this Chapter, as permitted under the Medicaid in Public Schools (MIPS) (Neb. Rev. Stat. §43-2511), except as provided in 92 NAC 51-012.09B.

012.09B With regard to services required to provide FAPE to an eligible child under Part B, the school district or approved cooperative:

012.09B1 May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under this Chapter;

012.09B2 May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this Chapter, but pursuant to 92 NAC 51-012.10C2 of this section, may pay the cost that the parents otherwise would be required to pay;

012.09B3 May not use a child□s benefits under a public benefits or insurance program if that use would:

012.09B3a Decrease available lifetime coverage or any other insured benefit;

012.09B3b Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

012.09B3c Increase premiums or lead to the discontinuation of benefits or insurance; or

012.09B3d Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

012.10 Use of Part B Funds

012.10A If a school district or approved cooperative is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this Chapter, to ensure FAPE the school district or approved cooperative may use its Part B funds to pay for the service.

012.10B To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district or approved cooperative may use its Part B IDEA funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

012.10C Proceeds from public benefits or insurance or private insurance.

012.10C1 Proceeds from public benefits or insurance or private insurance will not be treated as program income for the purposes of 34 CFR 80.25.

012.10C2 If a school district or approved cooperative spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 92 NAC 51-012.01C.

012.11 Prior to accessing Public Benefits or Insurance or Private Insurance, school districts or approved cooperatives must meet requirements contained in 92 NAC 51-009.09A or 009.09B.

013 Contracted Programs

013.01 Special education programs and support services may be provided by contracting with another school district, approved cooperative, or with a Nebraska Department of Education provisionally approved service provider. Responsibility for compliance with state and federal regulations for programs for children with disabilities remains with the school district.

013.02 The school district of residence or approved cooperative shall be responsible for the development and maintenance of the IEP, and the participation in all IEP meetings and shall assure that IEP meetings are arranged with the contracted program and the parents. Such arrangements may include meetings with the contracted program, the school district, the approved cooperative, and the parent. Meetings may occur within the district, at the contracted program site or another site if more appropriate.

013.02A The parent, the school district, and a contracted program representative shall be involved in any decision about the IEP.

013.02B The expenditures for special education contractual services shall be considered for payment of allowable costs under the following conditions:

013.02B1 The services claimed by the school district or approved cooperative were provided by contracted programs whose service(s) and rate(s) were provisionally approved by the Nebraska Department of Education.

013.02C The school district or approved cooperative will be allowed a forty-five (45) calendar day grace period when entering into contracts with programs not provisionally approved by the Nebraska Department of Education. Within this forty-five day grace period a school district or approved cooperative is responsible for notifying the program of the application and approval requirements of the Nebraska Department of Education.

013.02C1 If the contracted program, other than a school district or approved cooperative fails to submit an application within the forty-five (45) calendar day grace period, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following the expiration of

the grace period. If the agency's application for approval is denied by the Nebraska Department of Education, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following notification of the denial.

013.02C2 The cost of services provided by a contracted program which is not granted provisional approval by the Nebraska Department of Education will not be reimbursed.

013.02D The school district or approved cooperative and the provisionally approved contracted program shall enter into a contract which shall include but need not be limited to:

013.02D1 A description of the services to be provided;

013.02D2 Names of children to be served;

013.02D3 A cost schedule for the services; and

013.02D4 The Nebraska Department of Education service code and agency code for the service(s) provided.

013.02E The school district or approved cooperative shall have on file a signed copy of the contract.

013.02F The school district or approved cooperative shall monitor the progress of those children for whom they have contracted. For each child contracted for services, the school district or approved cooperative shall maintain within the school district or approved cooperative all applicable records as follows: a record of all referral information, notice to parents, parent notice and consent for initial evaluation, multidisciplinary evaluation team report, notification of IEP meeting, the individual education program, parent notice and consent for initial placement, notice of change of placement or program termination, notice of reevaluation, and other supportive data. School districts or approved cooperatives may elect to enter into agreements with provisionally approved contracted programs for the proper maintenance and protection of personally identifiable data on children with disabilities.

013.02G The school district or approved cooperative shall be liable for the payment of the educational costs for the placement of a

child in a program not operated by the school district or approved cooperative when:

013.02G1 The school district or approved cooperative initiated the placement; or

013.02G2 The school district or approved cooperative has agreed to the placement; or

013.02G3 The school district or approved cooperative is party to a decision under 92 NAC 55 which requires such placement and which has not been appealed by the school district or approved cooperative; or

013.02G4 The school district or approved cooperative has been a party to litigation resulting in a court order requiring the placement.

013.03 Nebraska Department of Education Provisionally Approved Service Provider Responsibility

013.03A With the exception of inservice providers and consultants who provide special education training for parents and staff which directly assist in providing appropriate programs for children with verified disabilities, all service providers contracting with a school district or approved cooperative shall seek approval and obtain a provisionally approved rate, service code, and agency code for such services.

013.03B The school district or approved cooperative shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for each child with a disability.

013.03C Service providers who request reimbursable rates exceeding NDE established rates shall submit, on forms provided by the Nebraska Department of Education, the following:

013.03C1 Personnel and their qualifications;

013.03C2 A cost schedule for services (for allowable costs, see Sections 011 and 012);

013.03C3 A written description of services;

013.03C4 Separation of sectarian educational costs and non-sectarian educational costs, if applicable;

013.03C5 Separation of the cost of residential care costs from the cost of the educational program, if applicable;

013.03C6 Documentation of conformance with building codes and safety requirements, if applicable; and

013.03C7 For Educational Service Units, a final report of expenditures which is due within 45 days after the service provider's fiscal year end.

013.03D Service providers who request reimbursable rates at or below NDE established rates shall submit, electronically via the NDE website to the Nebraska Department of Education, the following:

013.03D1 Personnel and their qualifications;

013.03D2 A cost schedule for services;

013.03D3 A written description of services; and

013.03D4 Documentation of conformance with building codes and safety requirements, if applicable.

013.03E Service providers must have on file a copy of the child's current IEP.

013.03F Service providers shall provide reasonable notice to the school district or approved cooperative prior to termination of services by the provider.

013.03G Service providers shall not be considered provisionally approved until the Commissioner of Education or designee grants such approval.

013.03H Service providers shall be considered for provisional approval annually.

013.03I When residential care is required for a child to attend an education program, the education program must be approved by

the Commissioner of Education or designee prior to approval for residential care.

014 Special Education Transportation

014.01 The board of education shall furnish one of the following types of services to children with disabilities who are residents of the school district:

014.01A Provide transportation for any child with a disability who is forced to leave the school district temporarily because of lack of educational services; and

014.01B Provide transportation within the school district for any child with a disability who is enrolled in a special education program of the district when either:

014.01B1 The child is required to attend a facility other than what would be the normal school of attendance of the child to receive appropriate special education services; or

014.01B2 The nature of the child's disability is such that special education transportation is required.

014.01C The board of education shall provide transportation for all children with disabilities birth to age five including children birth to age five who are wards of the court.

014.01D Transportation for Parentally-Placed Non-Public School Children

014.01D1 If necessary for the child to benefit from or participate in the services provided under this Chapter, a parentally-placed nonpublic school child with a disability must be provided transportation:

014.01D1a From the child's school or the child's home to a site other than the nonpublic school; and

014.01D1b From the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

014.01D2 School districts or approved cooperatives are not required to provide transportation from the child's home to the

nonpublic school.

014.01D3 The cost of transportation may be included in calculating whether the school district or approved cooperative has met the requirement of 92 NAC 51-012.08.

014.02 Responsibility for Transportation

014.02A The board of education shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district under Neb. Rev. Stat. §79-1129 by:

014.02A1 Paying a parent for transporting his or her child for actual miles traveled and claimed; or

014.02A2 Operating vehicles for the purpose of transporting children with disabilities; or

014.02A3 Contracting for transportation services for children with disabilities; or

014.02A4 Purchasing services from a common carrier; or

014.02A5 Arranging for such other transportation as is proper and necessary to transport children with disabilities.

014.02B The board of education shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost.

014.02C The board of education shall not provide for the transportation expenses of children with a disability who are residents of the school districts under Neb. Rev. Stat. §79-1129 if such children are able to use regular transportation services provided by the district unless:

014.02C1 Alteration of the routes of such regular transportation is required to transport children with a disability; or

014.02C2 Alteration is required of the equipment or vehicles used in such regular transportation in order to accommodate children with a disability.

014.02D The board of education shall provide for expenses equal to the statutory amount for each mile or fraction thereof traveled

between the place of residence and the program of attendance when a parent transports his or her child(ren) with a disability. (Refer to Neb. Rev. Stat. §§79-1129 and 81-1176.)

014.02E Except when a parent is transporting only his or her child, the board of education shall require that the driver and vehicle meet the standards required by 92 NAC 91 and 92.

014.02F For students with disabilities participating in the Option Enrollment Program under Neb. Rev. Stat. §§79-232 to 79-246, the transportation services included on the student's IEP shall be provided by the district from which the student optioned. The Department shall reimburse the district from which the student optioned for the cost of transportation in accordance with Section 014.

014.03 Allowable Expenses

014.03A The school district or approved cooperative shall provide for the transportation expenses of children with a disability transported by the parents of such children, upon receipt of claims submitted to the board of education by such parents. Such claims shall be documented and subject to audit. The claims shall:

014.03A1 State the names of the children transported, the dates they were transported, the mileage incurred in such transportation; and

014.03A2 Contain a statement that the claim is a true and correct report of mileage; and

014.03A3 Include the signature of the parent.

014.03B The school district or approved cooperative shall not be relieved of the obligation to provide transportation for an eligible child with a disability because of the inability or unwillingness of the child's parents to provide transportation. No eligible child with a disability may be denied or have limitations placed on the child's receipt of special education services required by an IEP as a result of the inability or unwillingness of parents to provide transportation.

014.03C The school district or approved cooperative shall provide for the expenses or the equivalent costs for transportation from the

child's legal residence (the residence of the parent(s)) or the Nebraska Department of Education approved residential placement, to the child's program.

014.03D A school district or approved cooperative may apply to the Department of Health and Human Services for reimbursement of transportation costs for the school age student who was made a ward of the state or court prior to his or her arrival in that school district.

014.03E When the school district or approved cooperative provides for transportation expenses under Neb. Rev. Stat. §79-1129 for children with a disability who are residents of the school district by utilizing vehicles operated by the school district, it shall include those transportation expenses below which are directly related to the vehicles used to transport special education children:

014.03E1 Salaries and fixed charges of drivers and necessary aides;

014.03E2 Vehicle operational supplies;

014.03E3 Vehicle repairs and maintenance;

014.03E4 Vehicle lease costs;

014.03E5 Vehicle insurance related to the transportation of children with a disability;

014.03E6 Documented administrative expenses of those engaged or employed for the purpose of supervising the transportation of children with a disability, their assistants, and clerical personnel but not including expenses for those engaged in general school or special education administration;

014.03E7 Such depreciation as is allowed in 92 NAC 51-014.04;

014.03E8 Those expenses attributable to an alteration of routes;

014.03E9 Those expenses attributable to alterations in equipment of vehicles, which must be depreciated; and

014.03E10 Facility expenses relating to the maintenance of vehicles used for transporting children with a disability. Transportation facility expense for purposes other than maintenance are not allowable reimbursable items. Maintenance includes such activities as repair, cleaning, greasing, fueling, and inspecting vehicles for safety. If a facility is used for purposes other than maintenance of vehicles used to transport children with a disability, expenses must be listed separately so that only those costs attributed to the maintenance of special education vehicles are included.

014.03F If income is derived from a transportation service provided under Neb. Rev. Stat. §79-1129 such income shall be used to offset expenses listed above to the extent of such income.

014.03G The Nebraska Department of Education shall allow a per mile cost for operating vehicles by using the categories of allowable expenses in 92 NAC 51-014.03 divided by the actual mileage the vehicle was driven for each fiscal year or the mileage rate provided in Neb. Rev. Stat. §81-1176. This procedure may be used in lieu of 92 NAC 51-014.03E.

014.03H The costs used must be adequately documented by the school district for review by the Nebraska Department of Education.

014.03I Detailed mileage logs must be maintained by the school district or approved cooperative and be available for review by the Nebraska Department of Education.

014.03J Undocumented expenses or mileage will not be allowed.

014.04 Depreciation

014.04A The school district or approved cooperative shall claim as a depreciation deduction a reasonable allowance for depreciation of:

014.04A1 Vehicles owned by the district, or portion of vehicles, or other capital assets owned by the district used in the transportation of children with a disability under Neb. Rev. Stat. §79-1129; and

014.04A2 Other capital expenditures required in the alteration

of vehicles used in the transportation of children with a disability under Neb. Rev. Stat. §79-1129.

014.04B An allowance for depreciation shall be based on a reasonable useful life span of an item at the time of acquisition or for previous district owed vehicles, the fair market value of the item when placed into special education service so that the amount set aside each year for depreciation plus the estimated salvage value, will, at the end of the useful life of the item, equal the cost of the item.

014.04B1 It shall be presumed that the reasonable period of depreciation for a new conventional school bus is seven years and that of a new small vehicle is three years.

014.04B2 If any school district or approved cooperative determines that the periods of depreciation set forth above are not reasonable because of the type of vehicles in use, the school district or approved cooperative may request alternate periods of depreciation for such vehicles, along with supporting reasoning in an application to the Nebraska Department of Education.

014.04B3 Capital expenditures in excess of two thousand dollars ($2000) require a depreciation schedule approved by NDE.

014.04B4 The allowance for depreciation must be claimed in the fiscal year in which the vehicle was used.

014.04B5 When equipment is used for purposes other than for special education transportation, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

014.04C When a depreciable item is disposed of or used for a purpose other than the transportation of children with a disability under Neb. Rev. Stat. §79-1129, the fair market value of such item shall be considered its actual salvage value.

014.04C1 Any actual salvage in excess of estimated salvage value shall be set off against any payments due to the board under Neb. Rev. Stat. §79-1129 and 79-1144.

014.04C2 When the actual salvage value is less than the estimated salvage value, then an expense for such difference shall be allowable under 92 NAC 51-014.04B.

014.04C3 When vehicles are not disposed of in a cash sale, recognized retail book values, such as the Used Car Guide of the National Automobile Dealers Association shall be evidence of fair market value unless a board of education demonstrates that it is not appropriate to use such recognized book values on a particular vehicle because of the condition or type of the vehicle in question.

014.04C4 A depreciation schedule shall be maintained by the district or approved cooperative as long as they own the vehicle.

014.05 Other Conditions

014.05A The fiscal year for school age and early childhood special education (Below Age Five) transportation shall be from September 1 to August 31.

014.05B Based on claim forms submitted reflecting the allowable costs of transporting children with disabilities, the Nebraska Department of Education will reimburse each school district or approved cooperative a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature. For early childhood special education (Below Age Five) transportation, refer to 92 NAC 51-014.05H. Transportation claim forms shall be submitted on or before September 30 of each year according to the provisions of 92 NAC 51-011.04C3 and 011.04C4. Forms are available at the Nebraska Department of Education.

014.05C Reimbursement to a school district or approved cooperative whose Special Education Transportation Final Claim Form is submitted to the Nebraska Department of Education after the due date shall be subject to the procedures specified in 92 NAC 51-004.14.

014.05D All transportation claims shall be documented and are subject to audit.

014.05E For payment for costs associated with the transportation

of children below the age of five with a disability who are wards of the court, refer to 92 NAC 51-014.05H.

014.05F Supplementary amendments to any Special Education School Age Transportation Final Claim Form previously approved by the Nebraska Department of Education may be submitted to the Nebraska Department of Education for review and approval within three years of the original due date. Approved amendments may be submitted by the Nebraska Department of Education to the Legislature for consideration of a supplemental appropriation.

014.05G Payments authorized by Neb. Rev. Stat. §79-1144 shall be made only to a school district or approved cooperative.

014.05H IDEA Base flow-through allocation (92 NAC 51-012.02) and the IDEA Enrollment and Poverty Allocation (92 NAC 51-012.06) are to be used to fund costs for transporting children with disabilities below the age of five.

014.05I Expenditure of IDEA Allocations shall be in accordance with 92 NAC 51-012.06C3, 012.06C4, and 012.06C5.

015 Children with Disabilities Attending Nonpublic Schools

015.01 Children Placed In or Referred To a Nonpublic School or Facility by the School District or Approved Cooperative As a Means of Providing Special Education and Related Services

015.01A School districts or approved cooperatives shall ensure that a child with a disability who is placed in or referred to a nonpublic school or facility by a school district:

015.01A1 Is provided special education and related services in conformance with an IEP that meets the requirements of Section 007 at no cost to the parents;

015.01A2 Is provided an education that meets the standards that apply to education provided by the school district or approved cooperative including the requirements of this Chapter except 92 NAC 51-003.62; and

015.01A3 Has all of the rights of a child with a disability who is served by a school district or approved cooperative.

015.01B The school district or approved cooperative is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising an IEP for a child with a verified disability.

015.01B1 Before a school district or approved cooperative places a child with a disability in, or refers a child to, a nonpublic school or facility, the school district or approved cooperative shall initiate and conduct a meeting to develop an IEP for the child in accordance with Section 007.

015.01B2 After a child with a disability enters a nonpublic school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the school district or approved cooperative.

015.01B3 If the nonpublic school or facility initiates and conducts these meetings, the school district or approved cooperative shall ensure that the parents and nonpublic representative:

015.01B3a Are involved in any decision about the child's IEP; and

015.01B3b Agree to any proposed changes in the IEP before those changes are implemented.

015.02 Children Placed In a Nonpublic School by Parents As a Means of Obtaining Special Education and Related Services; FAPE is At Issue

015.02A This Chapter does not require a school district or approved cooperative to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district or approved cooperative made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility as a means of obtaining special education and related services. However, the school district or approved cooperative shall include that child in the population whose needs are addressed consistent with 92 NAC 51-015.03.

015.02B Disagreements between a parent and a school district or

approved cooperative regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures of 92 NAC 55.

015.02B1 If the parents of a child with a disability, who previously received special education and related services under the authority of the school district or approved cooperative, enroll the child in a nonpublic preschool, elementary or secondary school as a means of obtaining special education and related services without the consent of or referral by the school district or approved cooperative, a court or a hearing officer may require the school district or approved cooperative to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district or approved cooperative had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

015.02B1a A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the school district or approved cooperative.

015.02C The cost of reimbursement described in 92 NAC 51-015.02B1 may be reduced or denied if:

015.02C1 At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district or approved cooperative to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or

015.02C2 At least 10 business days (including any holidays that occur on a business day), prior to the removal of the child from the public school or approved cooperative, the parents did not give written notice to the school district of the information described in 92 NAC 51-015.02C1; or

015.02C3 If prior to the parents removal of the child from the

public school, the school district or approved cooperative informed the parents, through the notice requirements described in 92 NAC 51-009.05, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

015.02C4 Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

015.02D Notwithstanding the notice requirement in 92 NAC 51-015.02C1 and 015.02C2, the cost of reimbursement:

015.02D1 Must not be reduced or denied for failure to provide the notice if:

015.02D1a The school district or approved cooperative prevented the parents from providing the notice;

015.02D1b The parents had not received notice, pursuant to 92 NAC 51-009.06 of the notice requirement in 92 NAC 51-015.02C1 and 015.02C2; or

015.02D1c Compliance with 92 NAC 51-015.02C1 and 015.02C2 would likely result in physical harm to the child; and

015.02D2 May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

015.02D2a The parents are not literate or cannot write in English; or

015.02D2b Compliance with paragraph 92 NAC 51-015.02C1 and 015.02C2 of this section would likely result in serious emotional harm to the child.

015.03 Children Enrolled In a Nonpublic School by Parents If FAPE Is Not At Issue

015.03A Parentally-placed nonpublic school children with disabilities means children with disabilities enrolled by their parents in nonpublic, including religious schools or facilities that meet the

definition of elementary or secondary school, other than children with disabilities covered in 92 NAC 51-015.01 and 015.02.

015.03A1 For purposes of providing equitable services utilizing IDEA funds described in 92 NAC 51-012.08:

015.03A1a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14, or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades.

015.03A1b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth designated by the school as a secondary grade.

015.03A2 For purposes of providing a Free Appropriate Public Education:

015.03A2a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

015.03A2b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth designated by the school as a secondary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

015.03B Child find for Parentally-placed Nonpublic School Children

with Disabilities

015.03B1 Each school district or approved cooperative must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district or approved cooperative, in accordance with 92 NAC 51-015.03B2 through 015.03B5.

015.03B2 The child find process must be designed to ensure:

015.03B2a The equitable participation of parentally-placed nonpublic school children; and

015.03B2b An accurate count of those children.

015.03B3 In carrying out the child find requirements, the school district or approved cooperative must undertake activities similar to the activities undertaken for public school children.

015.03B4 The cost of carrying out the child find requirements in this subsection, including individual evaluations, may not be considered in determining if a school district or approved cooperative has met its obligations under 92 NAC 51-012.08.

015.03B5 The child find process must be completed in a time period comparable to that for children attending public schools in the school district or approved cooperative consistent with 92 NAC 51-006.02.

015.03B6 Each school district or approved cooperative, in which one or more nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this subsection, include parentally-placed nonpublic school children who reside in a State other than Nebraska.

015.03C Provision of Services for Parentally-placed Nonpublic School Children

015.03C1 To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in nonpublic including religious elementary schools and secondary schools located in the school district or approved

cooperative, provision must be made for the participation of those children in the program assisted or carried out under Part B of the IDEA as amended in 2004 by providing them with special education and related services.

015.03C1a Parentally-placed nonpublic school children with disabilities are eligible for the provision of a free appropriate public education from the school district or approved cooperative in which they reside. Services available under such circumstances are referred to as a Free Appropriate Public Education (FAPE).

015.03C1a(1) An IEP shall be developed and implemented in accordance with 92 NAC 51-007 for each resident nonpublic school child receiving FAPE.

015.03C1b Parentally-placed nonpublic school children with disabilities who are attending a nonpublic school located outside of their district of residence may receive special education and related services (referred to as equitable services) from the district in which the nonpublic school is located or a free appropriate public education (FAPE) from the district in which they reside, but not both. The decision on whether to receive equitable services or FAPE is at the discretion of the child□s parent.

015.03C1b(1) In accordance with 92 NAC 51-015.03C1 and 92 NAC 51-015.03G through 015.03I, an equitable services plan must be developed and implemented for each nonresident nonpublic school child with a disability who has been designated by the school district or approved cooperative in which the nonpublic school is located to receive equitable services.

015.03C2 Each school district or approved cooperative must maintain in its records, and provide to the Nebraska Department of Education the following information related to parentally-placed nonpublic school children attending nonpublic schools located in the school district or approved cooperative:

015.03C2a The number of children evaluated;

015.03C2b The number of children determined to be children with disabilities; and

015.03C2c The number of children served.

015.03C3 Special education and related services (FAPE or equitable services) provided to parentally-placed nonpublic school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

015.03D Consultation

015.03D1 To ensure timely and meaningful consultation, a school district or approved cooperative must consult with representatives of nonpublic schools located in the school district or approved cooperative and representatives of parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services (FAPE and equitable services) for the children regarding the following:

015.03D1a The child find process, including:

015.03D1a(1) How parentally-placed nonpublic school children suspected of having a disability can participate equitably; and

015.03D1a(2) How parents, teachers, and nonpublic school officials will be informed of the process.

015.03D1b The determination of the proportionate share of Federal funds available to serve parentally-placed nonpublic school children with disabilities available under 34 CFR 300.133(C), including the determination of how the proportionate share of those funds was calculated.

015.03D1c The consultation process among the school district or approved cooperative, nonpublic school officials, and representatives of parents of parentally-placed nonpublic school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services (FAPE

or equitable services).

015.03D1d How, where, and by whom special education and related services (FAPE or equitable services) will be provided for parentally-placed nonpublic school children with disabilities, including a discussion of:

015.03D1d(1) The types of services, including direct services and alternate service delivery mechanisms; and

015.03D1d(2) How special education and related services funded by the proportionate amount of federal funds will be apportioned if such funds are insufficient to serve all parentally-placed nonpublic school children; and

015.03D1d(3) How and when those decisions will be made.

015.03D1e If the school district or approved cooperative disagrees with the views of the nonpublic school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district or approved cooperative will provide to the nonpublic school officials a written explanation of the reasons why the school district or approved cooperative chose not to provide services directly or through a contract.

015.03E Written Affirmation

015.03E1 When timely and meaningful consultation, as required by 92 NAC 51-015.03D has occurred, the school district or approved cooperative must obtain a written affirmation signed by the representatives of participating nonpublic schools.

015.03E2 If the representatives do not provide the affirmation within a reasonable period of time, the school district or approved cooperative must forward the documentation of the consultation process to the Nebraska Department of Education.

015.03F Complaints

015.03F1 A nonpublic school official has the right to submit a complaint to the Nebraska Department of Education that the school district or approved cooperative:

015.03F1a Did not engage in consultation that was meaningful and timely; or

015.03F1b Did not give due consideration to the views of the nonpublic school official.

015.03F2 If the nonpublic school official wishes to submit a complaint, the official must provide to the Nebraska Department of Education the basis of the noncompliance by the school district or approved cooperative with the applicable school provisions in this Chapter; and

015.03F2a The school district or approved cooperative must forward the appropriate documentation to the Nebraska Department of Education. If the nonpublic school official is dissatisfied with the decision of the Nebraska Department of Education, the official may submit a complaint to the United States Secretary of Education by providing the information on noncompliance described in 92 NAC 51-015.03F2. The Nebraska Department of Education must forward the appropriate documentation to the United States Secretary of Education.

015.03G Equitable Services for Nonresident Nonpublic School Children Determined

015.03G1 No parentally-placed nonresident nonpublic school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

015.03G2 Decisions about the equitable services that will be provided to parentally-placed nonresident nonpublic school children with disabilities must be made in accordance with 92 NAC 51-015.03G3 and 015.03D1c.

015.03G2a The school district or approved cooperative must make the final decisions with respect to the equitable

services to be provided to eligible parentally-placed nonresident nonpublic school children with disabilities.

015.03G3 If a nonresident nonpublic school child with a disability is enrolled in a religious or other nonpublic school by the child□s parents and will receive equitable services from a school district or approved cooperative, the school district or approved cooperative must:

015.03G3a Initiate and conduct meetings to develop, review, and revise an equitable services plan for the child, in accordance with 92 NAC 51-015.03H; and

015.03G3b Ensure that a representative of the religious or other nonpublic school attends each meeting. If the representative cannot attend, the school district or approved cooperative shall use other methods to ensure participation by the religious or other nonpublic school, including individual or conference telephone calls.

015.03H Equitable Services Provided to Nonresident Nonpublic School Children with Disabilities

015.03H1 The equitable services provided to parentally-placed nonresident nonpublic school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to parentally-placed nonresident nonpublic school children with disabilities do not have to meet the special education teacher requirements of 92 NAC 51-003.62.

015.03H2 Parentally-placed nonresident nonpublic school children with disabilities may receive a different amount of services than resident public and nonpublic school children with disabilities.

015.03H3 Each parentally-placed nonresident nonpublic school child with a disability who has been designated to receive equitable services under 92 NAC 51-015.03C1b must have an equitable services plan that describes the specific special education and related services that the school district or approved cooperative will provide to the child in light of the

services that the school district or approved cooperative has determined, through the process described in 92 NAC 51-015.03C and 015.03G, it will make available to parentally-placed nonresident nonpublic school children with disabilities.

015.03H4 The equitable services plan must, to the extent appropriate:

015.03H4a Meet the requirements of 92 NAC 51-007.07A or for a child ages three through five, meet the requirements of 92 NAC 51-007.02A1 with respect to the services provided; and

015.03H4b Be developed, reviewed, and revised consistent with 92 NAC 51-007.

015.03H5 Equitable services must be provided:

015.03H5a By employees of a public school district or approved cooperative; or

015.03H5b Through contract by the school district or approved cooperative with an individual, association, agency, organization, or other entity.

015.03I Location of Services and Transportation

015.03I1 Services (equitable or FAPE) to parentally-placed nonpublic school children with disabilities may be provided on the premises of nonpublic, including religious, schools, to the extent consistent with law.

015.03I1a A school district or approved cooperative may lease a classroom in a nonpublic school building. If properly drafted, the lease transforms the classroom into a public school classroom during the times covered by the lease. The board of education of a public school district may offer the special education programs enumerated in Neb. Rev. Stat. §79-1127 in a leased classroom in a nonpublic school building. It does not, however, have an unqualified legal duty to do so.

015.03J Due Process and State Complaints

015.03J1 Except as provided in 92 NAC 51-015.03J2, the procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12, 009.13, 009.14 and 92 NAC 55 do not apply to complaints that a school district or approved cooperative has failed to meet the requirements of 92 NAC 51-015.03C1 through 015.03I and 92 NAC 51-014.01D and 012.08 including the provision of services indicated on the child's equitable services plan.

015.03J2 The procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12 through 009.14 and 92 NAC 55 apply to complaints that a school district or approved cooperative has failed to meet the child find requirements in 92 NAC 015.03B1, including the requirements in 92 NAC 51-009.08 and 006.

015.03J3 Any due process complaint regarding the child find requirements (as described in 92 NAC 51-015.03J2) must be served on the school district or approved cooperative in which the nonpublic school is located and filed with the Nebraska Department of Education.

015.03J4 Any complaint that the Nebraska Department of Education or school district or approved cooperative has failed to meet the requirements in 92 NAC 51-015.03C through 015.03E and 012.08 and 92 NAC 51-015.03G through 015.07 must be filed in accordance with the procedures described in 92 NAC 51-009.11.

015.03J5 A complaint filed by a nonpublic school official under 92 NAC 51-015.03F1 must be filed with the Nebraska Department of Education in accordance with the procedures in 92 NAC 51-015.03F2.

015.04 A school district or approved cooperative may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:

015.04A The classes are at the same site; and

015.04B The classes include children enrolled in public schools and children enrolled in nonpublic schools.

015.05 A school district or approved cooperative may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

015.05A A school district or approved cooperative shall use the special education funds provided to meet the special education and related services (FAPE or equitable services) needs of parentally-placed nonpublic school children with disabilities but not for meeting:

015.05A1 The needs of a nonpublic school; or

015.05A2 The general needs of the children enrolled in a nonpublic school.

015.06 A school district or approved cooperative may use special education funds to make public school personnel available in other than public facilities:

015.06A To the extent necessary to provide services designed for parentally-placed nonpublic school children with disabilities; and

015.06B If those services are not normally provided by the nonpublic school.

015.07 A school district or approved cooperative may use special education funds to pay for the services of an employee of a nonpublic school to provide special education and related services (FAPE or equitable services) if:

015.07A The employee performs the services outside of his or her regular hours of duty; and

015.07B The employee performs the services under public supervision and control.

015.08 A school district or approved cooperative may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.

015.08A The school district or approved cooperative shall ensure that the equipment and supplies placed in a nonpublic school:

015.08A1 Are used only for the purpose of providing special education and related services; and

015.08A2 Can be removed from the nonpublic school without remodeling the nonpublic school facilities.

015.08B The school district or approved cooperative shall remove equipment or supplies from a nonpublic school if:

015.08B1 The equipment and supplies are no longer needed for the purpose of providing special education and related services; or

015.08B2 Removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.

015.08C No special education funds may be used for repairs, minor remodeling, or the construction of nonpublic school facilities.

015.09 A school district or approved cooperative must control and administer the funds used to provide special education and related services under 92 NAC 51-015.03G through 92 NAC 51-015.03I, and hold title to and administer materials, equipment, and property purchased with those funds for those uses and purposes provided in this Chapter.

016 Disciplinary Removal of Children with Disabilities

016.01 Change of Placement for Disciplinary Removals

016.01A For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:

016.01A1 The removal is for more than 10 consecutive school days; or

016.01A2 The child is subjected to a series of removals that constitute a pattern:

016.01A2a Because the series of removals total more than 10 school days in a school year;

016.01A2b Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

016.01A2c Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to

one another.

016.01B The school district or approved cooperative determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

016.01B1 This determination is subject to review through due process and judicial proceedings.

016.02 Authority of School Personnel

016.02A School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of subsection 016.02 of this Chapter, is appropriate for a child with a disability who violates a code of student conduct.

016.02B School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51-016.01).

016.02B1 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district or approved cooperative must provide services to the extent required under 92 NAC 51-016.02D.

016.02C For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child□s disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.

016.02D A child with a disability who is removed from the child□s

current placement pursuant to 92 NAC 51-016.02C or 016.02G must:

016.02D1 Continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

016.02D2 Receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

016.02D3 The services described in 92 NAC 51-016.02D1, 016.02D2, 016.02D4, and 016.02D5 may be provided in an interim alternative educational setting.

016.02D4 A school district or approved cooperative is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

016.02D5 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

016.02D6 If the removal is a change of placement under 92 NAC 51-016.01, the child's IEP team determines appropriate services under 92 NAC 51-016.02D.

016.02E Manifestation Determination

016.02E1 Within 10 school days of any decision to change the

placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

016.02E1a If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or

016.02E1b If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.

016.02E2 The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.

016.02E3 If the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.

016.02F If the school district or approved cooperative, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:

016.02F1 Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

016.02F2 Except as provided in 92 NAC 51-016.02G, return

the child to the placement from which the child was removed, unless the parent and the school district or approved cooperative agree to a change of placement as part of the modification of the behavioral intervention plan.

016.02G School personnel may remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

016.02G1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative;

016.02G2 Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative; or

016.02G3 Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative.

016.02H On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative shall notify the parents of that decision, and provide the parents the procedural safeguards in 92 NAC 51-009.

016.03 The interim alternative educational setting in 92 NAC 51-016.02C, 016.02D and

016.02G shall be determined by the child's IEP team.

016.04 Appeals Regarding Placement in an Alternative Education Setting

016.04A The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a school district or

approved cooperative that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing by filing a petition pursuant to 92 NAC 55.

016.04B A hearing officer shall hear and make a determination regarding an appeal pursuant to 92 NAC 55 requested under 92 NAC 51-016.04A.

016.04C In making the determination under 92 NAC 51-016.04B, the hearing officer may:

016.04C1 Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 92 NAC 51-016.02 or that the child's behavior was a manifestation of the child's disability; or

016.04C2 Order a change in placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

016.04C3 The procedures under 92 NAC 51-016.04 may be repeated, if the school district or approved cooperative believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

016.04D Whenever a hearing is requested under 92 NAC 51-016.04A, the parents or the school district or approved cooperative involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements in 92 NAC 55, except as provided in 92 NAC 51-016.04D1 through 016.04D2b.

016.04D1 The Nebraska Department of Education is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

016.04D2 Unless the parents and school district or approved

cooperative agree in writing to waive the resolution meeting described in 92 NAC 51-016.04D2a, or agree to use the mediation process described in 92 NAC 51-009.12 □

016.04D2a A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

016.04D2b The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

016.04D3 The decisions on expedited due process hearings are appealable consistent with 92 NAC 55.

016.05 When an appeal under 92 NAC 51-016.04 has been requested by either the parent or the school district or approved cooperative:

016.05A The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 92 NAC 51-016.02C, whichever occurs first, unless the parent and the school district or approved cooperative agree otherwise.

016.06 Protections for Children Not Yet Eligible for Special Education and Related Services

016.06A A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct of the school district or approved cooperative, may assert any of the protections provided for in this Chapter if the school district or approved cooperative had knowledge (as determined in accordance with 92 NAC 51-016.06B) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

016.06B A school district or approved cooperative shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

016.06B1 The parent of the child has expressed concern in writing to supervisory or administrative personnel of the school district or approved cooperative, or a teacher of the child, that

the child is in need of special education and related services;

016.06B2 The parent of the child requested an evaluation of the child pursuant to 92 NAC 51-006.02B1; or

016.06B3 The teacher of the child or other personnel of the school district or approved cooperative expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the school district or approved cooperative or to other supervisory personnel of the school district or approved cooperative.

016.06C A school district or approved cooperative shall not be deemed to have the knowledge that the child is a child with a disability if:

016.06C1 The parent of the child has not allowed an evaluation of the child pursuant to 92 NAC 51-006; or

016.06C2 The parent of the child has refused services under this Chapter; or

016.06C3 The child has been evaluated pursuant to 92 NAC 51-006 and was determined to not be a child with a disability under this Chapter.

016.06D Conditions that Apply if No Basis of Knowledge

016.06D1 If a school district or approved cooperative does not have knowledge that a child is a child with a disability (in accordance with 92 NAC 51-016.06B or 016.06C) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with 92 NAC 51-016.06D2.

016.06D2 If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 92 NAC 51-016.02, the evaluation shall be conducted in an expedited manner.

016.06D2a Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or

expulsion without educational services.

016.06D2b If a child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district or approved cooperative and information provided by the parents, the school district or approved cooperative must provide special education and related services in accordance with this Chapter, including the requirements of 92 NAC 51-016.

016.07 Referral to and Action by Law Enforcement and Judicial Authorities

016.07A Nothing in this Chapter shall be construed to prohibit school districts or approved cooperatives from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

016.07B A school district or approved cooperative reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the school district or approved cooperative reports the crime.

016.07C A school district or approved cooperative reporting a crime under 92 NAC 51-016.07 may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Education Rights and Privacy Act (FERPA).

Appendix A

Excerpts from the Individuals with Disabilities Education Act 2004 (IDEA 2004)

602(4) CORE ACADEMIC SUBJECTS. "The term "core academic subjects" has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.

(Note: Section 9101 of the Elementary and Secondary Education Act of

1965 defines "core academic subjects" as follows:

> *Core Academic Subjects means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history and geography.)*

602(10) HIGHLY QUALIFIED.

(A) In GENERAL For any special education teacher, has the meaning given the term "high qualified" in Section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also

(i) includes the requirements described in Subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of Section 9101 of such Act by meeting the requirements of Subparagraph (C) and (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS

When used with respect to any public elementary school or secondary school special education teacher teaching in the State, such term means that

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher; except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under Section 1111(b)(1)

of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either

(iii) meet the applicable requirements of Section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(iv) meet the requirements of Subparagraph (B) or (C) of Section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either

(i) meet the applicable requirements of Section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than two years after the date of employment.

(E) RULE OF CONSTRUCTION – Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA – A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

602(18) LIMITED ENGLISH PROFICIENT. – The term "limited English proficient" has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.

(Note: Section 9101 of the Elementary and Secondary Education Act of 1965 defines "Limited English Proficient" as follows:

The term "limited English proficient", when used with respect to an individual, means an individual –

(A) who is aged 3 through 21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

(C) (i) who was not born in the United States or whose native language is a language other than English

(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual –

(i) the ability to meet the State's proficient level of achievement on State assessments described in Section 1111(b)(3);

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.)

612(a)(16) PARTICIPATION IN ASSESSMENTS.

(A) In General. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under Section 1111 of the Elementary and Secondary Education Act of 1965 with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

612(a)(16)(C)(ii)(II) If the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

1413(a)(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES. The local education agency shall cooperate in the Secretary's efforts under Section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

614(a)(5)(A) SPECIAL RULE FOR ELIGIBILITY DETERMINATION. In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in Section 1208(3) of the Elementary and Secondary Education Act of 1965;

FISCAL IMPACT
STATEMENT

Agency:	Nebraska Department of Education
Prepared by:	Amy Rhone
Date Prepared:	November 7, 2025
Phone:	(531) 207-9978
Title:	92
Chapter:	51
Name:	Regulations and Standards for Special Education Programs
Statement Status:	Hearing Draft

Type of Fiscal Impact:

	State Agency	Political Subdivision	Regulated Public
No Fiscal Impact		X	X
Increase Costs	Minimal		
Decrease Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

State Agency: It will cost approximately $650 to hold the hearing and print copies for distribution upon approval of the revised rule. The Legislature already provides funds to the Nebraska Department of Education for this program.

Political Subdivision: _____

Regulated Public: _____

NDE CONTRACTS

DATE REC'D	CONTRACT #	AMENDMENT #	CONTRACT NAME	MAXIMUM CONTRACT AMOUNT	START DATE	ENDING DATE	FUNDING SOURCE	SCOPE OF SERVICES	CONTACT PERSON
1/2/2025	45217		Share Collaborative	$10,000	2/3/2025	12/19/2025	Federal	Provide training.	Lindy Foley
1/2/2025	45187	AM#1	Security Equipment Incorporated					Increase amoumt/scope.	Joel Scherling
1/2/2025	44316	AM#1	Office Innovations					Extend date.	Joel Scherling
1/6/2025	45219		Hendrickson Leadership Group	$4,450	4/1/2025	6/5/2025	General	Conduct training.	Katie Graham
1/6/2025	44245	AM#2	ESU 4					Increase amoumt/scope.	Zainab Rida
1/6/2025	45216		Abigail Fiske	$23,000	1/1/2025	12/31/2025	Federal`	Serve as 2025 FCCLA State Officer Coordinator.	Katie Graham
1/7/2025	45199		Peru State College	$83,997	11/15/2024	6/30/2027	Federal	Lower finance barrier for teaching candidates.	Brad Dirksen
1/13/2025	45213		UNL	$700,000	11/15/2024	6/30/2027	Federal/General	Carry out Nebraska Teacher Apprenticeship Act & administer State Apprenticeship Expansion Formula Grant.	Brad Dirksen
1/15/2025	42127	AM#3	UNL					Extend date.	Zainab Rida
1/17/2025	45212		Chadron State College	$100,000	11/15/2024	6/30/2027	Federal/General	Carry out Nebraska Teacher Apprenticeship Act & administer State Apprenticeship Expansion Formula Grant.	Brad Dirksen
1/22/2025	45225		Kimberly Sanderson	$15,000	1/15/2025	1/14/2026	Federal/General	Coaching/training services.	Melody Hobson
1/23/2025	45220		Hayes & Associates	$54,848	1/152025	9/30/2025	Federal	Child & Adult Care Foo Program auits of for-profit centers.	Zainab Rida
1/23/2025	45223		Dick Meyer	$15,000	1/24/2025	6/30/2025	General	Provide consultation/facilitation.	Shirley Vargas
1/23/2025	45224		HHS	$29,406	1/21/2025	1/20/2026	Federal	Provide information on TBI individuals.	Lindy Foley
1/24/2025	45222		UNL	$6,414	2/1/2025	1/31/2026	Federal	Support NDE transition program by maintaining website.	Amy Rhone
1/30/2025	45227		Smarter Learning Group	$20,000	1/21/2025	3/31/2025	Federal	Develop Family Literacy Implementation Guide for schools.	Zainab Rida
1/31/2025	45226		Brain & Body Balancing	$17,000	2/1/2025	1/31/2026	Federal/General	Provide coaching/training services.	Melody Hobson
2/3/2025	45221		Renner's Cleaning Service	$2,130	2/1/2025	4/30/2025	Federal	Cleaning service for Norfolk VR office.	Lindy Foley
2/3/2025	45075	AM#2	ESUCC					Reduce amount.	Zainab Rida
2/4/2025	45214		Nebraska Appleseed	$9,500	1/31/2025	1/30/2026	Federal	Support Nebraska School Breakfast Challenge.	Zainab Rida
2/4/2025	45195		Wayne State College	$200,000	11/15/2024	6/30/2027	Federal	Lower finance barrier for teaching candidates.	Brad Dirksen
2/10/2025	44054	AM#2	NE State College System					Extend date.	Lane Carr
2/10/2025	45110	AM#1	ESU 2					Adjust contract amount.	Lindy Foley
2/10/2025	45231		Lrene Jo Smith	$9,000	3/1/2025	2/28/2026	Federal/General	Provide coaching/training services.	Melody Hobson
2/13/2025	45175	AM#1	K Crom Saunders					Funding change.	Amy Rhone
2/13/2025	45234		Say Hey There	$9,000	3/1/2025	8/31/2025	General	Create advertising campaigns and posts for Safe2Help NE social media platforms.	Zainab Rida
2/13/2025	45236		Emspace	$49,500	2/10/2025	2/9/2026	Federal/General	Assist NDE in expanding the awareness and use of local specialty crops with materials development as part of a Dept of Agriculature grant as well as educational and culinary resourses.	Zainab Rida
2/13/2025	45199	AM#1	Peru State College					Scope/consideration.	Brad Dirksen
2/14/2025	45065	AM#1	NE Children & Families Foundation					Increase amount.	Zainab Rida
2/14/2025	45202	AM#1	College of Saint Mary					Scope/consideration.	Brad Dirksen
2/14/2025	45196	AM#1	Midland University					Increase amoumt/scope.	Brad Dirksen
2/14/2025	45240		Tanya's Childcare	$3,000	3/1/2025	2/27/2026	General	Use of classroom.	Melody Hobson
2/14/2025	44370	AM#1	ESU 7					Scope.	Zainab Rida
2/14/2025	45195	AM#1	Wayne State College					Scope/consideration.	Brad Dirksen
2/14/2025	45235		ESU 9	$25,000	2/14/2025	4/30/2025	Federal	Execute Deaf & Hard of Hearing Statewide Conference.	Amy Rhone
2/18/2025	45239		Easter Seals of NE	$7,860.70	3/1/2025	12/31/2025	Federal	Provide training.	Lindy Foley
2/18/2025	45241		Creative Press & Design	$15,000	3/1/2025	2/28/2026	General	Produce and ship signage for Step Up to Quality.	Melody Hobson
2/18/2025	45229		UNL	$48,591	4/1/2025	3/31/2026	Federal	Assist with meeting Federal post-school outcome data reporting requirements.	Amy Rhone
2/18/2025	45185		Children's Hospital & Medical Center	$83,500	12/1/2024	11/30/2025	Federal	Provide technical assistance with School Mental Health.	Zainab Rida
2/18/2025	45237		Heather Schmidt	$10,000	3/1/2025	2/28/2026	Federal/General	Provide coaching services.	Melody Hobson
2/20/2025	45238		Kansas State School for the Deaf	$10,000	1/8/2025	5/22/2025	General	Pay for residential costs associated with the student enrollment.	Amy Rhone
2/20/2025	45232		Kids Can Community Center	$3,000	2/15/2025	2/14/2026	General	Use of classroom.	Melody Hobson
2/24/2025	45194	AM#1	UNO					Scope/consideration.	Brad Dirksen
2/25/2025	45233		Partners for Insightful Evaluation	$49,650	2/5/2025	2/4/2026	Federal	Summarize findings, create report, analyze after-school pre and post surveys.	Zainab Rida
2/25/2025	45243		Black Chick Farm	$15,000	3/7/2025	3/6/2026	Federal	Assist in development and evaluation of Farm to School and Early Care Education and Harvest of the Month resources.	Zainab Rida
2/25/2025	45242		NCBVI	$24,999.99	3/1/2025	2/28/2026	Federal	Provide installation of equipment and individualized consumer training.	Lindy Foley
2/27/2025	45192		A1 Media	$49,999	1/17/2025	1/16/2027	Federal	Provide simple and efficient video captain for virtual NDE conferences.	Kristin Yates
2/28/2025	45050	AM#1	Center for Rural Affairs					Increase amount.	Zainab Rida
2/28/2025	45188	AM#1	UNK					Scope/consideration.	Brad Dirksen
2/28/2025	45244		Tasha Jedlicka	$13,000	3/1/2025	2/28/2026	Federal/General	Conduct rating reviews for Step Up to Quality.	Melody Hobson
3/3/2025	45027	AM#1	Saffron Buettner					Consideration.	Melody Hobson
3/3/2025	45245		Susan Borcher	$4,500	3/1/2025	2/28/2026	General	Provide training.	Melody Hobson
3/3/2025	45247		Janice Lee	$4,500	3/1/2025	2/28/2026	General	Provide training.	Melody Hobson
3/3/2025	45248		Suzanne Schneider	$5,000	4/1/2025	3/31/2026	Federal/General	Provide coaching and training services.	Melody Hobson
3/3/2025	45250		UNL	$30,683	3/17/2025	3/16/2026	Federal	Assist schools in increasing awareness of the MyPlate symbol, resources and the nutritional quality of schoolmeals among key audiences.	Zainab Rida
3/5/2025	45228		UNL	$49,634.50	1/27/2025	5/30/2026	General	Establish a Networked Improvement Community with pilot rural high schools with high rates of chronic absenteeism.	Shirley Vargas

NDE CONTRACTS

DATE REC'D	CONTRACT #	AMENDMENT #	CONTRACT NAME	MAXIMUM CONTRACT AMOUNT	START DATE	ENDING DATE	FUNDING SOURCE	SCOPE OF SERVICES	CONTACT PERSON
3/5/2025	45252		Amara Munoz	$15,000	3/15/2025	3/14/2026	General	Provide spanish translation of trainings and other documents.	Melody Hobson
3/5/2025	45254		Primrose School of Lincoln	$3,000	4/1/2025	3/31/2026	General	Provide classrooms for program quality assessment observations.	Melody Hobson
3/6/2025	46000		Eagle Delivery Service	$17,446.08	7/1/2025	6/30/2026	Federal	Mail services.	Krysti Michl
3/6/2025	45253		Missouri Rehab Association	$2,700	5/1/2025	7/31/2025	Federal	Mail services.	Krysti Michl
3/7/2025	45246		Jeanne Fielder	$4,500	3/1/2025	2/28/2026	General	Provide training.	Melody Hobson
3/7/2025	45149	AM#2	LINQ					Increase amount/scope.	Zainab Rida
3/10/2025	45251		Jennifer Snyder	$4,500	3/1/2025	2/28/2026	General	Provide training.	Melody Hobson
3/12/2025	45255		Monarch Psychological Svcs	$33,000	3/25/2025	6/30/2025	Federal	Medical consultative services.	Krysti Michl
3/18/2025	45258		Smarter Learning Group	$48,000	3/17/2025	9/15/2025	Federal/General	Support the development of Nebraska attendance action plan.	Zainab Rida
3/19/2025	45275		CodeHS Inc	$1,275,000	3/14/2025	6/30/2026	General	Develop computer science and technology education teacher professional learning.	Katie Graham
3/19/2025	45256		Margaret Donovan	$33,000	3/25/2025	6/30/2025	Federal	Medical consultative services.	Krysti Michl
3/19/2025	45264		ESU 1	$37,525.37	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/19/2025	45259		World Speaks	$33,660	3/15/2025	3/14/2026	Federal/General	Provide oral interpretation and written translation for NDE Early Childhood training and training materials.	Melody Hobson
3/20/2025	45265		ESU 6	$23,044.68	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/20/2025	45162	AM#1	NE Children & Families Foundation					Extend date.	Lane Carr
3/202025	45263		Beatrice YMCA	$7,457.98	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/21/2025	45276		Madonna School & Comm Based Svcs	$22,736.56	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/21/2025	45277		Omaha Goodwill	$46,556.64	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/21/2025	45271		Norris Public Schools	$16,246.43	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/21/2025	45279		Cambridge Public Schools	$48,156.17	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/21/2025	45268		The Arc of Lincoln	$20,554.08	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/21/2025	45270		Grand Island Public Schools	$48,885.34	4/1/2025	7/31/2025	Federeal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/21/2025	45283		Transunion Risk & Alternative Data Solutions	$2,040	4/1/2025	3/31/2026	General	Subscription service to proprietary public record databases.	Ami Huff
3/25/2025	45037	AM#1	Donelle Wolters					Extend date/increase amount/scope.	Katie Graham
3/25/2025	45107	AM#1	District Management Group					Consideration.	Shirley Vargas
3/25/2025	45186		Dyslexico	$499,985.12	3/21/2025	6/30/2025	Federal	Conduct research to design a new method leveraging A1 technology to identify, correct and categorize errors and patterns in student writing.	Allyson DenBeste
3/25/2025	45262		ESU 13	$16,424.02	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/25/2025	45274		ESUCC	$250,000	6/6/2025	11/15/2026	Federal	Develop pilot program to make menstrual products available to each school district.	Zainab Rida
3/25/2025	45269		District OR1 Public School	$18,312.25	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/25/2025	45267		Angel Guardians	$48,984.97	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/25/2025	45278		CASA of South Central NE	$48,999.99	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/25/2025	45273		Diller O'Dell Public Schools	$10,811.97	4/1/2025	7/31/2025	Fedreal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/26/2025	45258	AM#1	Smarter Learning Group					Other	Zainab Rida
3/26/2025	45285		Community Language Cooperative	$48,000	5/13/2025	5/12/2026	Federal/General	Translation of materials.	Melody Hobson
3/26/2025	45230		HHS	$10,500	4/5/2025	4/4/2026	Federal	Conduct facilitation/presentation.	Amy Rhone
3/27/2025	45257		Green School Farms	$16,800	3/26/2025	3/25/2026	Federal	Assist with planning and implementation of the Heartland Farm to School & ECE Institute.	Zainab Rida
3/27/2025	45281		LPS	$34,871.23	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/27/2025	45266		Whisperng Acres Tails & Treasures	$46,175.90	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/27/2025	45280		Novak Educational Consulting	$7,000	6/3/2025	6/3/2025	Federal	Keynote speaker.	Allyson DenBeste
3/28/2025	45287		Linda Villagomez	$9,000	5/1/2025	4/30/2026	Federal/General	Provide training in Spanish.	Melody Hobson
3/28/2025	45272		Seward Public Schools	$20,081.44	4/1/2025	7/31/2025	Federal	Provide summer transition program for youth ages 14-21.	Lindy Foley
3/28/2025	45282		Linda Meyers	$19,500	5/1/2025	4/30/2026	General	Provide training and classroom quality observations.	Melody Hobson
3/28/2025	45261		Corinne Combs	$10,335.25	3/26/2025	7/1/2025	Federal	Serve as SkillsUSA Nebraska State Leadership & Skills Conference Coordinator.	Katie Graham
3/28/2025	45260		Delivery Associates	$49,000	3/10/2025	6/30/2025	Federal	Strategic planning with apprenticeship stakeholders to grow registered apprenticesips in Nebraska.	Brad Dirksen
3/28/2025	45289		ESUCC	$2,750	3/1/2025	3/1/2026	Federal	Pay for annual renewal of the Nebraska OER Commons site which is a shared expense.	Allyson DenBeste
3/31/2025	42127	AM#4	UNL					Extend date.	Zainab Rida
3/31/2025	44323	AM#2	OCIO-Sreekanth Pall					Extend date/increase amount.	Kristin Yates
4/1/2025	45227	AM#1	Smarter Learning Group					Extend date/increase amount.	Zainab Rida
4/3/2025	45290		Value-Up	$39,000	4/1/2025	12/17/2025	Federal	Provide training.	Zainab Rida
4/9/2025	45284		National Financial Educators	$8,500	3/20/2025	9/30/2025	Federal	Provide opening keynote at Nebraska Get Connected conference.	Zainab Rida
4/9/2025	45070	AM#1	District Management Group					Scope.	Shirley Vargas
4/9/2025	45114	AM#1	Avenue Scholars					Amount change.	Shirley Vargas
4/9/2025	45115	AM#1	Central Plains Center for Services					Amount change.	Shirley Vargas
4/9/2025	45116	AM#1	College Possible					Amount change.	Shirley Vargas
4/9/2025	45294		Campbell Cleaning Svc	$11,560	4/1/2025	3/31/2026	Federal	Cleaning service for Kearney VR Office.	Lindy Foley
4/9/2025	45292		Rapport International	$10,000	5/1/2025	4/30/2026	Federal	Interpreting Services.	Lindy Foley
4/9/2025	45286		Cynthia Villanueva	$9,000	5/1/2025	4/30/2026	Federal/General	Provide training in Spanish.	Melody Hobson
4/9/2025	45249		UNL	$12,100	4/1/2025	3/31/2026	Federal/General	Provide training and CDA observations.	Melody Hobson

NDE CONTRACTS

DATE REC'D	CONTRACT #	AMENDMENT #	CONTRACT NAME	MAXIMUM CONTRACT AMOUNT	START DATE	ENDING DATE	FUNDING SOURCE	SCOPE OF SERVICES	CONTACT PERSON
4/9/2025	46003		Kathryn Benes	$126,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46001		Kathleen Barrett	$126,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46015		Kevin Coughlin	$151,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46010		Helen Montoya	$91,000	7/1/225	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46008		Surgical Care	$176,000	7/1/2025	6/30/2025	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46017		Lee Branham	$61,000	7/1/2025	6/30/2025	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46009		Patricia Newman Consulting	$205,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46018		Margaret Donovan	$126,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46012		Kevin Wycoff	$151,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46014		Daniel Cronk	$205,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46019		Monarch Psychological Svcs	$126,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46005		Alexandra Suslow-Geditz	$181,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46002		Bradford Brabec	$205,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46016		Dianna Clyne	$136,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46007		Joanell Wheeler	$126,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46011		Jerry Tanner	$205,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46013		Thomas Martin	$126,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46006		Terri Vontz	$61,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/9/2025	46004		Child & Family Services	$176,000	7/1/2025	6/30/2026	Federal	Medical consultative services.	Krysti Michl
4/10/2025	45293		Michelle Rupiper	$16,000	5/1/2025	4/30/026	Federal	Provide coaching/training and curriculum development.	Melody Hobson
4/14/2025	45189	AM#1	Geonasha Agbeletey					Increase amount/scope.	Lane Carr
4/14/2025	45291		TNTP	$36,193	4/1/2025	6/1/2025	General	Design/present professional learning session.	Shirley Vargas
4/14/2025	45288		Fremont YMCA	$3,000	5/1/2025	4/30/2026	Federal/General	Provide classrooms.	Melody Hobson
4/14/2025	45296		Meghan Gibbons	$12,000	5/1/2025	4/30/2026	Federal/General	Provide coaching/training services.	Melody Hobson
4/15/2025	45300		Vivayic	$22,500	4/7/2025	9/30/2025	Federal	Build online learning module.	Zainab Rida
4/16/2025	46020		Lorenzo Brown	$11,000	7/15/2025	7/16/2025	Federal	Provide keynote presentation for VR's 2025 State Staff Conference.	Lindy Foley
4/16/2025	45298		Danielle Bettmann	$8,000	6/7/2025	6/6/2026	Federal	Review and approve independent study documentaton via NECPRS.	Melody Hobson
4/17/2025	45297		Mobility Motoring	$115,290	4/1/2025	12/31/2025	Federal	Provide installation of an ATC Accessibility Vehicle Modification.	Lindy Foley
4/17/2025	45304		Dyane Smokorowski	$2,500	6/2/2025	6/3/2025	Federal	Speaker at Future Ready conference.	Allyson DenBeste
4/17/2025	45301		Megan Shepherd	$48,900	6/1/2025	5/31/2026	Federal	Make changes/edits to Early Childhood online course on the Learning Management System.	Melody Hobson
4/17/2025	45303		ESU 9	$37,705	4/21/2025	9/30/2025	Federal	Deliver high quality professional development to teachers and school leaders.	Katie Graham
4/21/2025	45076	AM#1	Emspace					Scope/consideration.	Melody Hobson
4/21/2025	45299		Emily Aksamit	$14,500	5/1/2025	4/30/2026	Federal/General	Provide CLASS and ERS observations for Step Up to Quality.	Melody Hobson
4/21/2025	45306		Student1	$40,000	5/1/2025	8/31/2025	Federal	Maintain and transfer the Early Childhood resource and referral website.	Melody Hobson
4/21/2025	44036	AM#1	Utah State University					Other.	Amy Rhone
4/21/2025	45213	AM#1	UNL					Amount change/scope/consideration.	Brad Dirksen
4/22/2025	45305		Taryn Brown	$25,557	4/21/2025	3/31/2026	Federal	Serve as HOSA State Officer Coordinator.	Katie Graham
4/22/2025	45308		Ali Hearn Coaching & Consulting	$49,500	5/20/2025	5/19/2026	Federal	Provide training and support in the implementation of advanced restorative practices.	Amy Rhone
4/22/2025	46021		Barbara Davidson	$5,000	8/4/2025	8/5/2025	Federal	Keynote speaker.	Allyson DenBeste
4/28/2025	44379	AM#1	Kristi Albrecht					Increase amount.	Melody Hobson
4/30/2025	44314	AM#3	Edwise					Increase amount.	Kristin Yates
5/1/2025	45312		Vivayic	$30,000	4/28/2025	9/15/2025	Federal	Update psychological safety and suicide prevention toolkits.	Zainab Rida
5/1/2025	46022		Illumination Group	$11,500	7/14/2025	7/16/2025	Federal	Provide keynote presentation for VR's 2025 State Staff Conference.	Lindy Foley
5/1/2025	45201	AM#1	Teachstone					Scope/consideration.	Melody Hobson
5/1/2025	45313		NE Dept of Environment and Energy	$12,000	6/1/2025	8/31/2025	Federal	Conduct health inspections.	Zainab Rida
5/2/2025	45310		Reed Family Learning Academy	$3,000	5/1/2025	4/30/2026	Federal/General	Provide classrooms used for ERS/CLASS observations.	Melody Hobson
5/5/2025	45309		NE Chamber of Commerce	$42,000	4/25/2025	7/31/2025	Federal	Coordinate efforts surrounding education and the workforce.	Ryan Foor
5/5/2025	45311		ESU 2	$49,800	3/12/2025	9/11/2025	Federal	Conduct training.	Zainab Rida
5/5/2025	45316		ESU 9	$12,000	4/28/2025	9/15/2025	Federal	Conduct training.	Zainab Rida
5/6/2025	45307		Sparq Data Solutions	$2,600	4/23/2025	3/31/2026	General	Electronic meeting service.	Elizabeth Tegtmeier
5/7/2025	45295		Douglas Co Health Dept	$8,000	6/1/2025	9/30/2025	Federal	Conduct health inspections.	Zainab Rida
5/7/2025	45302		Lori Chleborad	$7,000	5/1/2025	4/30/2026	Federal/General	Provide coaching and training services.	Melody Hobson
5/7/2025	45034	AM#1	State of Iowa-Dept of Ed					Other.	Amy Rhone
5/12/2025	45318		ESU 6	$15,120	5/5/2025	9/15/2025	Federal	Conduct training.	Zainab Rida
5/12/2025	46023		Teaching Strategies	$48,258	7/1/2025	6/30/2026	Federal/General	Provide training.	Melody Hobson
5/13/2025	45317		Brenda Saxe	$14,000	6/1/2025	5/31/2026	Federal/General	Provide coaching/training services.	Melody Hobson
5/14/2025	45324		Eric Knoll	$6,000	5/15/2025	7/31/2025	Federal	Plan and conduct CTE Jumpstart Summer professional development workshop.	Katie Graham
5/15/2025	45315		Nikki Robertson-Griffin	$5,500	6/2/2025	6/3/2025	Federal	Present at Future Ready conference.	Allyson DenBeste
5/16/2025	45062	AM#1	Nicole Long					Increase amount.	Melody Hobson
5/16/2025	45321		Southesat Comm College	$18,368	5/31/2025	6/26/2025	Federal	Deliver high qualty technical skill workshops.	Katie Graham
5/19/2025	45314		John Mlinar	$11,976	5/19/2025	9/30/2025	General	Process application and communicate with applicants.	Brad Dirksen
5/19/2025	45239	AM#1	Easter Seals of NE					Consideration.	Lindy Foley

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DATE REC'D	CONTRACT #	AMENDMENT #	CONTRACT NAME	MAXIMUM CONTRACT AMOUNT	START DATE	ENDING DATE	FUNDING SOURCE	SCOPE OF SERVICES	CONTACT PERSON
5/19/2025	45320		Central Comm College	$15,211	5/15/2025	6/30/2025	Federal	Deliver high quality technical skill workshops.	Katie Graham
5/19/2025	45325		ESU 6	$13,500	6/1/2025	5/31/2026	Federal/General	Provide 1/2 price Early Learning Guidelines training registrations.	Melody Hobson
5/19/2025	46024		ESU 4	$4,445,600	7/1/2025	6/30/2027	General	Operate NCECBVI.	Amy Rhone
5/19/2025	46027		NWEA	$7,598,321.97	7/1/2025	6/30/2026	General	Provide statewide assessments.	Allyson DenBeste
5/19/2025	45328		Student1	$45,000	5/15/2025	6/30/2025	General	Technical assistance for systems-involved youth data system planning.	Kristin Yates
5/19/2025	45326		Foundry Community	$2,600	5/15/2025	6/30/2025	Federal	System alignment for apprenticeship expansion in partnership with NDOL and other stakehlders.	Lane Carr
5/19/2025	45323		Paula Thompson	$3,000	6/1/2025	7/31/2025	Federal	Complete Nebraska Head Start Collaboration Office needs assessment and 5-year strategic plan development.	Melody Hobson
5/20/2025	45040	AM#2	Bartle & Geier Law Firm					Increase amount.	Amy Rhone
5/20/2025	45052	AM#1	Sandra Miller					Consideration.	Melody Hobson
5/20/2025	46029		Teaching Strategies	$40,000	8/1/2025	7/31/2027	Federal	Provide access and technical support to NDE as well as subscripton programs for the Teaching Strategic GOLD online platform.	Amy Rhone
5/20/2025	46028		UNMC	$78,484	7/1/2025	6/30/2026	Federal	Support NDE in working with the child outcomes process for Results Matter.	Amy Rhone
5/22/2025	45189	AM#2	Geonasha Agbeletey					Increase amount/scope/consideration.	Lane Carr
5/22/2025	45330		ESU 3	$15,000	6/1/2025	5/31/2026	Federal/General	Provide training.	Melody Hobson
5/28/2025	45322		Marna Stack	$10,000	5/26/2025	5/25/2026	Federal	Support for local food for schools.	Zainab Rida
5/28/2025	45334		ESU 2	$42,700	5/27/2025	9/11/2025	Federal	Conduct trainings.	Zainab Rida
5/28/2025	46030		Kansas State School for the Deaf	$20,000/student	8/1/2025	7/31/2026	General	Allow Nebraska students to attend.	Amy Rhone
5/28/2025	46034		SPED Strategies	$75,000	7/1/2025	6/30/2026	Federal	Expand support to schools.	Amy Rhone
5/28/2025	45331		Susan Wiggins	$6,500	6/1/2025	5/31/2026	Federal	Support Bellevue Public schools.	Amy Rhone
5/29/205	45333		ESU 7	$12,660	5/28/2025	9/15/2025	Federal	Conduct training.	Zainab Rida
5/29/2025	45332		Nancy Woodhams	6,500	6/1/2025	5/31/2026	Federal	Support Bellevue Public schools.	Amy Rhone
6/2/2025	45338		Laurel Wheeler	$8,000	6/1/2025	8/15/2025	Federal	Support for local food for schools.	Zainab Rida
6/4/2025	44387	AM#1	UNO					Increase amount/scope.	Shirley Vargas
6/6/2025	45319		Midland University	$1,620,921	5/9/2025	6/30/2027	Federal	Award State Apprenticeship Expansion Formula grant funds.	Brad Dirksen
6/10/2025	45339		ESU 10	$6,400	6/9/2025	9/15/2025	Federal	Conduct trainings.	Zainab Rida
6/10/2025	45336		Jackson Lewis PC	$15,960	5/23/2025	12/31/2026	Federal/General	Provide professional legal services.	Kristin Yates
6/10/2025	46032		NCSA	$24,000	7/1/2025	9/30/2025	General	Administrator Days Conference.	Ryan Foor
6/10/2025	46025		Kimberly Jacobson	$36,000	7/1/2025	6/30/206	Federal	Provide guidance & support in mental health psychological first aid for schools and suicide prevention awareness/response.	Zainab Rida
6/10/2025	46026		Sally Carlson	$36,000	7/1/2025	6/30/2026	Federal	Provide guidance & support in mental health psychological first aid for schools and suicide prevention awareness/response.	Zainab Rida
6/10/2025	45262	AM#1	ESU 13					Scope.	Lindy Foley
6/10/2025	45076	AM#2	Emspace					Increase amount.	Melody Hobson
6/10/2025	45036	AM#1	Traci Strazdas					Consideration.	Melody Hobson
6/10/2025	43084	AM#3	ACERI Partners					Consideration.	Amy Rhone
6/10/2025	43085	AM#4	Data Driven Enterprises					Consideration.	Amy Rhone
6/10/2025	43087	AM#3	Nicole Stewart					Consideration.	Amy Rhone
6/10/2025	46038		Traci Strazdas	$76,600	7/1/2025	6/30/2026	Federal/General	Serve as program quality tool statewide anchor, complete observations and provide training.	Melody Hobson
6/10/2025	46046		ESU 9	$852,913.80	7/1/2025	6/30/2027	General	Provide professional development.	Amy Rhone
6/10/2025	46043		ESU 9	$609,122.70	7/1/2025	6/30/2027	General	Provide staff--Statewide Coordinator.	Amy Rhone
6/10/2025	46047		ESU 7	$503,710.90	7/1/2025	6/30/2027	General	Provide professional development.	Amy Rhone
6/11/2025	46035		Therapeutic Play	$9,100	7/1/2025	6/30/2026	Federal	Provide training.	Amy Rhone
6/12/2025	45312	AM#1	Vivayic					Increase amount/scope/consideration.	Zainab Rida
6/12/2025	45337		Firespring	$20,400	6/15/2025	6/14/2026	Federal/General	Manage website.	Melody Hobson
6/12/2025	45327		ESU 7	$4,200	6/1/2025	5/31/2026	Federal/General	Provide training registrations.	Melody Hobson
6/13/2025	45041	AM#2	Anderson & Creager & Wittstruck					Increase amount/consideration.	Amy Rhone
6/13/2025	45305	AM#1	Taryn Brown					Consideration.	Katie Graham
6/13/2025	46033		TNTP	$49,780	7/1/2025	6/30/2026	Federal	Ensure students with disabilities receive support.	Amy Rhone
6/16/2025	46037		Education First Consulting	$120,000	7/1/025	6/30/2026	Federal	Carry out grant activities.	Allyson DenBeste
6/16/2025	46036		State of Iowa-Dept of Ed	$119,657/student	7/1/2025	6/3/2026	General	Provide services to children & youth with hearing impairments.	Amy Rhone
6/17/2025	45150	AM#2	CN Resource					Increase amount/scope.	Zainab Rida
6/17/2025	42219	AM#5	ACT					Other.	Allyson DenBeste
6/17/2025	45319	AM#1	Midland University					Consideration.	Brad Dirksen
6/17/2025	46041		SB Consulting	$36,500	7/1/2025	6/30/2026	Federal/General	Provide coaching, training and completion of program quality observations.	Melody Hobson
6/17/2025	46044		ESU 3	$1,244,826.70	7/1/2025	6/30/2027	General	Provide professional development.	Amy Rhone
6/30/2025	46048		Literacy Pro	$47,831	7/1/2025	6/30/2026	Federal	Serve as the National Reporting System online student data management system.	Katie Graham
6/30/2025	46050		George Toman	$30,000	7/8/2025	7/7/2026	Federal	Provide consultation.	Amy Rhone
6/30/2025	46045		ESU 18	$602,719.90	7/1/2025	6/30/2027	General	Provide professional development.	Amy Rhone
6/30/2025	45340		Instruction Partners	$34,000	6/13/2025	12/31/2025	General	Develop training materials.	Allyson DenBeste
6/30/2025	45329		UNMC	$34,254	6/20/2025	9/29/2025	Federal	Create content development plan.	Zainab Rida
6/30/2025	46052		ESU 1	$8,100	7/1/2025	6/30/2026	Federal/General	Provide half-priced registration fees for Early Learning Guidelines training.	Melody Hobson
6/30/2025	45039	AM#1	Amanda Hoffmann					Consideration.	Katie Graham

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DATE REC'D	CONTRACT #	AMENDMENT #	CONTRACT NAME	MAXIMUM CONTRACT AMOUNT	START DATE	ENDING DATE	FUNDING SOURCE	SCOPE OF SERVICES	CONTACT PERSON
6/30/2025	45049	AM#1	SPED Strategies					Increase amount.	Amy Rhone
6/30/2025	46039		Sandra Miller	$23,600	8/1/2025	7/31/2026	Federal/General	Provide coaching, training and completion of program quality observations.	Melody Hobson
6/30/2026	45335		Nebraska Expressive Arts Therapy Foundation	$11,300	5/19/2025	5/18/2026	Federal	Provide training.	Zainab Rida
6/30/2025	46040		Rebecca Dunlap-Morton	$8,200	7/1/2025	6/30/2026	Federal/General	Provide training and complete program quality observations.	Melody Hobson
6/30/2025	46042		Kayla Parr	$6,800	7/1/2025	6/30/2026	Federal/General	Provide training.	Melody Hobson
7/1/2025	46049		Boys Town	$845,000	7/1/2025	6/30/2026	General	Host anonymous report line.	Zainab Rida
7/1/2025	46055		ESU 10	$97,492	7/1/2025	6/30/2026	Federal	Provide staff, equipment and facility to support ATP activities.	Lindy Foley
7/1/2025	45341		National Assoc of State Head Injury Admin	$49,000	6/30/2025	6/29/2026	Federal	Develop curriculum/content for training staff.	Lindy Foley
7/7/2025	45261	AM#1	Corinne Combs					Extend date/scope.	Katie Graham
7/7/2025	45029	AM#1	Leah Merkwan					Consideration.	Melody Hobson
7/7/2025	45267	AM#1	Angel Guardians					Consideration.	Lindy Foley
7/7/2025	45328	AM#1	Student1					Extend date.	Kristin Yates
7/7/2025	45213	AM#2	UNL					Decrease amount.	Brad Dirksen
7/8/2025	45040	AM#3	Bartle & Geier Law Firm					Increase amount.	Lindy Foley/Amy Rhone
7/9/2025	44248	AM#2	OCIO-Mike Eckel					Increase amount/extend date.	Kristin Yates
7/10/2025	45195	AM#2	Wayne State College					Decrease amount/scope/consideration.	Brad Dirksen
7/14/2025	45202	AM#2	College of Saint Mary					Decrease amount/scope/consideration.	Brad Dirksen
7/14/2025	46056		Ntl Assoc of Head Injury Admin	$49,000	7/14/2025	7/13/2026	Federal	Provide technical assistance and support.	Lindy Foley
7/15/2025	45236	AM#1	Emspace					Increase amount/scope/consideration.	Zainab Rida
7/18/2025	46064		Stephanie Winter	$16,000	7/3/2025	6/30/2026	Federal	Interpreting Services.	Lindy Foley
7/18/2025	46020	AM#1	Lorenzo Brown					Extend date/increase amount/scope.	Lindy Foley
7/21/2025	46058		Brain Injury Association of NE	$48,891.02	7/14/2025	7/13/2026	Federal	Expand access to and inrease availability of Peer to Peer Support for Nebraskans.	Lindy Foley
7/22/2025	46063		Beth Townsend	$16,000	7/7/2025	6/30/2026	Federal	Interpreting Services.	Lindy Foley
7/22/2025	46066		June Analco	$16,000	7/7/2025	6/30/2026	Federal	Interpreting Services.	Lindy Foley
7/24/2025	46076		Ben Sparks	$16,000	7/1/2025	6/30/2026	Federal	Interpreting Services.	Lindy Foley
7/24/2025	44054	AM#3	NE State College System					Extend date/consideration.	Lane Carr
7/24/2025	45065	AM#2	NE Children & Families Foundation					Increase amount/scope/consideration.	Zainab Rida
7/24/2025	46053		InLumon	$175,000	7/1/2025	6/30/2026	General	Secure hosting NE Educator licsensure system.	Brad Dirksen
7/24/2025	46067		EdCount	$49,000	8/1/2025	12/31/2025	Federal	Ensure grant activities move forward without delay.	Allyson DenBeste
7/29/2025	46065		Gerianne Knoebel	$16,000	7/7/2025	6/30/2026	Federal	Interpreting Services.	Lindy Foley
7/31/2025	46051		Westminster	$3,000	7/1/2025	6/30/2026	Federal/General	Provide classrooms.	Melody Hobson
8/1/2025	46054		ACTFL	$3,000	9/1/2025	10/10/2025	General	Provide workshops.	Allyson DenBeste
8/4/2025	46062		Leah Merkwan	$28,000	8/1/2025	7/31/2026	Federal/General	Provide coaching/trng.	Melody Hobson
8/4/2025	46071		Kristi Albrecht	$21,000	8/1/2025	7/31/2026	Federal/General	Provide coaching/trng.	Melody Hobson
8/4/2025	46072		Center for Rural Affairs	$49,999	8/15/2025	8/14/2026	Federal	Assist w/Harvest of the Month program.	Zainab Rida
8/4/2025	45188	AM#2	UNK					Decrease amount/scope/consideration.	Brad Dirksen
8/5/2025	46060		Nicole Long	$9,200	8/1/2025	7/31/2026	Federal	Provide quality observations.	Melody Hobson
8/5/2025	46061		Diane Ellis	$8,100	8/1/2025	7/31/2026	Federal	Provide quality observations.	Melody Hobson
8/6/2025	46050	AM#1	George Toman					Increase amount.	Amy Rhone
8/7/2025	46075		Margaret Propp	$16,000	7/1/2025	6/30/2026	Federal	Interpreting Services.	Lindy Foley
8/8/2025	46059		LaSonja Kirksey	$17,000	8/1/2025	7/31/2026	Federal	Provide program quality observations.	Melody Hobson
8/11/2025	46070		SRI	$64,600	7/14/2025	12/31/2026	Federal	Assess comprehensive literacy state development grant.	Allyson DenBeste
8/11/2025	46078		Utah State University	$18,200	8/26/2025	8/27/2025	Federal	Provide training.	Allyson DenBeste
8/11/2025	46042	AM#1	Kayla Parr					Increase amount/scope/consideration.	Melody Hobson
8/11/2025	45151	AM#1	Lacey Sateren					Increase amount.	Melody Hobson
8/11/2025	46077		Kathleen Miller	$20,000	9/1/2025	8/31/2026	Federal	Conduct training.	Melody Hobson
8/13/2025	46076	AM#1	Ben Sparks					Extend date/increase amount.	Lindy Foley
8/13/2025	46074		National Council for Behavioral Health	$26,000	8/1/2025	9/30/2025	Federal	Provide training on youth mental health first aid.	Zainab Rida
8/13/2025	46079		Emspace	$200,000	9/1/2025	8/31/2026	Federal	Continuation of statewill communicaton and public engagement project.	Melody Hobson
8/15/2025	46068		Bartle & Geier Law Firm	$25,000	7/1/2025	6/30/2026	Federal	Serve as hearing officer.	Amy Rhone
8/18/2025	46082		META Associates	$19,500	8/18/2025	6/30/2026	Federal	Provide annual external evaluation for 2024-25.	Beth Wooster
8/25/2025	46073		Nebraska Chamber of Commerce	$75,000	7/30/2025	6/30/2026	General	Ensuyre allignment between PK-16 pathways employer needs statewde talent, education goals, stronger connections across education and workforce systems.	Lane Carr
8/25/2025	46087		Central Plains Center for Services	$41,519.16	8/25/2025	6/30/2026	General	Provide educational services to low-income and underrepresented students in high school and postsecondary education.	Shirley Vargas
8/26/2025	46075	AM#1	Margaret Propp					Extend date/increase amount.	Lindy Foley
8/26/2025	45338	AM#1	Laurel Wheeler					Extend date/increase amount.	Zainab Rida
8/27/2025	46083		Partners for Insightful Evaluation	$32,000	9/1/2025	10/31/2026	Federal	Provide performance evaluation services for NE VR's Traumatc Brain Injury State Demonstration Grant Program.	Lindy Foley
8/28/2025	42405	AM#6	Ben Baumfalk					Extend date.	Kristin Yates
8/28/2025	46095		Emspace	$49,840	9/5/2025	9/4/2026	Federal	Design and develop digital assets.	Zainab Rida
9/3/2025	46081		Rita Porter	$25,000	8/10/2025	6/30/2026	General	Serve as Nebraska IT Initiatve Project Manager.	Katie Graham
9/3/2025	46094		Say Hey There	$18,000	9/1/2025	8/31/2026	General	Promotion of SafeHelp on social media.	Zainab Rida
9/3/2025	46084		Jennifer Burkey	$25,000	10/1/2025	9/30/2026	Federal/General	Provide coaching and training services.	Melody Hobson

NDE CONTRACTS

DATE REC'D	CONTRACT #	AMENDMENT #	CONTRACT NAME	MAXIMUM CONTRACT AMOUNT	START DATE	ENDING DATE	FUNDING SOURCE	SCOPE OF SERVICES	CONTACT PERSON
9/3/2025	46085		Larissa Resendiz de Moguel	$21,000	10/1/2025	9/30/2026	Federal/General	Provide coaching and training services.	Melody Hobson
9/3/2025	45328	AM#2	Student1					Extend date.	Kristin Yates
9/4/2025	46089		Avenue Scholars	$261,573.71	8/11/2025	6/30/2026	General	Provide educational services to low-income and underrepresented students in high school and postsecondary education.	Shirley Vargas
9/4/2025	46088		College Possible	$112,102.73	8/25/2025	6/30/2026	General	Provide educational services to low-income and underrepresented students in high school and postsecondary education.	Shirley Vargas
9/8/2025	46086		UNL	$3,300	9/1/2025	5/31/2026	Federal	Participate in Heartland Farm to School and Early Care & Education Institute.	Zainab Rida
9/9/2025	46043	AM#1	ESU 9					Consideration.	Amy Rhone
9/9/2025	46091		Nicole Stewart	$49,999	8/8/2025	8/7/2026	Federal	Conduct rule complaint investigation.	Amy Rhone
9/9/2025	46090		Torsh	$49,808.20	9/18/2025	9/17/2026	Federal	Provide licenses to Talend Premium & Network Architecture.	Amy Rhone
9/9/2025	46093		Data Driven Enterprises	$49,999	8/8/2025	8/7/2026	Federal	Conduct rule complaint investigation.	Amy Rhone
9/9/2025	46092		ACERI Partners	$49,999	8/8/2025	8/7/2026	Federal	Conduct rule complaint investigation.	Amy Rhone
9/10/2025	46101		Cline Williams Wright Johnson & Oldfather	$150,000	7/1/2025	6/30/2026	Federal/General	Serve as hearing officer.	Ami Huff
9/10/2025	46106		Bartle & Geier Law Firm	$150,000	7/1/2025	6/30/2026	Federal/General	Serve as hearing officer.	Ami Huff
9/10/2025	46098		National Assoc of State Directors of Career Technical Consortium	$49,000	9/8/2025	11/30/2026	Federal	Update and develop Nebraska nontraditional occupations by gender list.	Katie Graham
9/10/2025	46105		Kuder	$175,000	9/10/2025	8/31/2026	General	Annual statewide license for comprehensive online college and career planning system.	Katie Graham
9/10/2025	46104		Peetz Koerwitz & Lafleur	$150,000	7/1/2025	6/30/2026	Federal/General	Serve as hearing officer.	Ami Huff
9/15/2025	42361	AM#2	NE Chamber of Commerce					Increase amount.	Lane Carr
9/15/2025	45309	AM#1	NE Chamber of Commerce					Increase amount.	Lane Carr
9/15/2025	46109		ESU 13	$90,000	9/2/2025	8/28/2026	Federal	Assist with implmentation of the statewide educator effectiveness system.	Shirley Vargas
9/15/2025	46099		NE Children & Families Foundation	$45,000	9/8/2025	8/31/2026	Federal	Coordinate and implement the Boys in HEAL Professional project.	Katie Graham
9/16/2025	45171	AM#1	Dawn Murphy					Increase amount.	Melody Hobson
9/16/2025	46108		NCSA	$40,000	9/15/2025	8/31/2026	Federal	Provide conference management services.	Katie Graham
9/16/2025	46100		Andori	$3,180	9/1/2025	8/31/2026	Federal	Provide cleaning services.	Lindy Foley
9/16/2025	46102		Koukol Johnson Schmit & Milone	$150,000	7/1/2025	6/3/2026	Federal/General	Serve as hearing officer.	Ami Huff
9/17/2025	45342		Genesis Contracting Group	$85,770.38	3/11/2025	3/10/2026	Trust Fund	Complete repairs at NCECBVI.	Amy Rhone
9/19/2025	46103		Mattson Ricketts Law Firm	$150,000	7/1/2025	6/30/2026	Federal/General	Serve as hearing officer.	Ami Huff
9/19/2025	46070	AM#1	SRI					Other.	Allyson DenBeste
9/22/2025	46111		ESU 10	$55,500	10/1/2025	9/30/2026	Federal	Provide hosting/maintenance for website.	Lindy Foley
9/22/2025	46112		Susan Jensen	$14,134	10/1/2025	9/30/2026	Federal/General	Conduct rating reviews.	Melody Hobson
9/23/2025	46110		Cidi Labs	$20,600	9/1/2025	7/31/2027	Federal	Purchase software application. Provide ability to convert casvas course content into required accessibility guidelines format.	Allyson DenBeste
9/25/2025	46107		Anderson & Creager & Wittstruck	$150,000	7/1/2025	6/30/2026	Federal/General	Serve as hearing officer.	Ami Huff
9/26/2025	46118		Deaf Services Unlimited	$15,000	10/1/2025	9/30/2026	Federal	Provide video remote interpreting & CART captioning services.	Lindy Foley
9/26/2025	46114		University of Massachusetts-Boston	$373,445	10/1/2025	8/31/2026	Federal	Serve as independent evaluator.	Lindy Foley
9/29/2025	45149	AM#3	LINQ					Increase amount from $296,112.80 to $371,112.80.	Zainab Rida
9/29/2025	42219	AM#6	ACT					Increase amount from $8,210,022 to $8,215,022.	Allyson DenBeste
9/29/2025	46123		ESU 6	$11,229.30	10/1/2025	5/17/2026	Federal	Conduct a job expo.	Lindy Foley
9/29/2025	46121		ESU 2	$12,000	10/1/2025	5/15/2026	Federal	Conduct a job expo.	Lindy Foley
9/29/2025	46113		Ben Baumfalk	$144,836.32	10/3/2025	6/30/2026	General	Serve as ECIDS Project Lead.	Melody Hobson
9/30/2025	46097		UNL	$56,547	8/29/2025	12/15/2025	General	Conduct psychometric review of Nebraska Reading Improvement Act Assessments.	Allyson DenBeste
10/1/2025	45319	AM#2	Midland University					Decrease amount from $1,620,921 to $1,540,647.	Brad Dirksen
10/2/2025	45275	AM#1	CodeHS Inc					$190,000 will be moved from expenses to services. Total contract amount does not change.	Katie Graham
10/2/2025	46116		Lacey Sateren	$16,000	11/1/2025	10/31/2026	Federal/General	Provide program quality observations.	Melody Hobson
10/3/2025	46069		Anderson & Creager & Wittstruck	$25,000	7/1/2025	6/30/2026	Federal	Serve as hearing officer.	Amy Rhone
10/3/2025	46131		UNMC	$44,153	10/1/2025	12/31/2025	Federal	Continue providing statewide evaluation services for the 21st Century Community Learning Centers.	Zainab Rida
10/8/2025	46130		Smarter Learning Group	$6,000	10/1/2025	12/31/2025	Federal	Complete phase 3 of the chronic absenteeism work.	Zainab Rida
10/9/2025	46117		LINQ	$303,693.44	10/6/2025	9/30/2026	Federal	Maintenance agreement for CNP system.	Zainab Rida
10/9/2025	46115		MTW Solutions	$291,429	7/1/2025	6/30/2026	Federal/General	Continue support for NE GMS.	Bryce Wilson
10/9/2025	46124		ESU 7	$4,266	10/1/2025	5/16/2026	Federal	Conduct a job expo.	Lindy Foley
10/9/2025	46122		ESU 3	$6,161.32	10/1/2025	5/17/2026	Federal	Conduct a job expo.	Lindy Foley
10/9/2025	46120		ESU 1	$10,193.04	10/1/2025	5/15/2026	Federal	Conduct a job expo.	Lindy Foley
10/9/2025	46125		Bryan Hermsen	$25,000	10/1/2025	9/30/2026	Federal	Provide updates and maintenance to ATP's database ATTIE.	Lindy Foley
10/9/2025	46132		Education Resource Strategies	$301,000	10/6/2025	6/30/2026	General	Design a statewide secondary instructional planning guide and provide support to a high school redesign and strategy planning cohart.	Shirley Vargas
10/10/2025	46137		Gerald Gill Strait	$14,400	10/15/2025	3/31/2026	Federal	Provide professional training.	Zainab Rida
10/10/2025	46135		District Management Group	$133,000	10/6/2025	6/30/2026	General	Implement Breakthrough Results program.	Shirley Vargas
10/10/2025	46138		Deanne Mueller	$20,000	11/15/2025	11/14/2026	Federal/General	Provide coaching services.	Melody Hobson
10/10/2025	46136		Erica Timperley	$75,000	11/7/2025	11/6/2026	Federal/General	Serve as ERS Anchor.	Melody Hobson
10/10/2025	46126		Four Monkeys Press	$31,000	11/1/2025	10/31/2026	Federal	Provide program quality observations.	Melody Hobson
10/15/2025	46127		OCIO (Swetha Manne)	$28,068.24	10/1/2025	12/15/2025	Federal	Provide NECPRS developer.	Melody Hobson

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DATE REC'D	CONTRACT #	AMENDMENT #	CONTRACT NAME	MAXIMUM CONTRACT AMOUNT	START DATE	ENDING DATE	FUNDING SOURCE	SCOPE OF SERVICES	CONTACT PERSON
10/15/2025	46128		OCIO (Sushmitha Sayempu)	$32,348.24	10/1/2025	12/15/2025	Federal	Provide NECPRS developer.	Melody Hobson
10/15/2025	46096		UNMC	$47,234	9/1/2025	12/31/2025	Federal	Provide training.	Zainab Rida
10/15/2025	46129		OCIO (Eric Tomasek)	$43,048.24	10/1/2025	12/15/2025	Federal	Provide application development support.	Amy Rhone
10/17/2025	46119		UNL	$245,000	9/30/2025	9/29/2026	Federal	Provide support for AWARE project.	Zainab Rida
10/20/2025	46088	AM#1	College Possible					Consideraton--Correct flat fee invoice amount.	Shirley Vargas
10/20/2025	46097	AM#1	UNL					Extend date and increase amount (include two additonal vendors in scope).	Allyson DenBeste
10/20/2025	46068	AM#1	Bartle & Geier Law Firm					Increase amount/consderation (cover additional caseload for Hearing Officer work.	Amy Rhone
10/21/2025	46140		Edwise	$430,425	7/1/2025	6/30/2026	Federal	Continue portal development and support.	Jill Aurand
10/24/2025	46139		Dawn Murphy	$18,600	12/1/2025	11/30/2026	Federal/General	Provide program quality observations.	Melody Hobson
10/24/2025	46034	AM#1	SPED Strategies					Scope modifications and budget increase.	Amy Rhone
10/24/2025	46144		Sara Voss	$41,000	12/1/2025	11/30/2026	General	Step Up to Quality coach/observer.	Melody Hobson
10/24/2025	46142		Amanda Palmer	$100,000	10/31/2025	6/30/2026	Federal/General	Serve as hearing officer.	Amy Rhone
10/24/2025	46146		Concord Mediation Center	$3,000	11/1/2025	9/30/2026	Federal	Provide mediation services and/or outreach/training.	Amy Rhone
10/27/2025	45185	AM#1	Children's Nebraska					Extend ending date.	Zainab Rida
10/28/2025	46143		Amanda Palmer	$49,999.99	10/31/2025	6/30/2026	Federal/General	Serve as hearing officer.	Ami Huff
10/29/2025	46134		NE Children & Families Foundation	$45,000	10/10/2025	10/9/2026	Federal	Provide technical assistance to 21st Century Community Learning Centers Program Directors.	Zainab Rida
10/29/2025	46069	AM#1	Anderson & Creager & Wittstruck					Increase/consideration (cover additional case workload).	Ami Huff
10/29/2025	46150		The Resolution Center	$3,000	11/1/2025	9/30/2026	Federal	Provide mediation services and/or outreach/training.	Amy Rhone
10/29/2025	46145		Central Mediation Center	$3,000	11/1/2025	9/30/2026	Federal	Provide mediation services and/or outreach/training.	Amy Rhone
11/3/2025	46141		EconSys	$49,930	11/1/2025	4/1/2026	Federal	Conduct a cost study benefits.	Lindy Foley
11/3/2025	46147		Mediation West	$3,000	11/1/2025	9/30/2026	Federal	Provide mediation services and/or outreach/training.	Amy Rhone
11/5/2025	46133		Child Trends	$172,546	10/29/2025	6/30/2026	General	Provide support to school building leaders.	Shirley Vargas
11/5/2025	46149		The Mediation Center	$3,000	11/1/2025	9/30/2026	Federal	Provide mediation services and/or outreach/training.	Amy Rhone
11/6/2025	46134	AM#1	NE Children & Families Foundation					Consideration (adjusting budget line items to better allocate funds).	Zainab Rida
11/10/2025	46148		Nebraska Mediation Center	$3,000	11/1/2025	9/30/2026	Federal	Provide mediation services and/or outreach/training.	Amy Rhone
11/13/2025	45215	AM#1	Grafton & Associates					Increase amount (online licenses have increased).	Katie Graham
11/13/2025	46151		NE Mediation Association	$5,000	11/1/2025	9/30/2026	Federal	Provide mediation services and/or outreach/training.	Amy Rhone
11/13/2025	45233	AM#1	Partners for Insightful Evaluation					Increase amount (allow for additional supplies/purchases).	Zainab Rida
11/13/2025	46170		ESU 9	$25,289.25	11/7/2025	6/30/2026	Federal	Provide high quality professional development for teachers/school leaders.	Katie Graham
11/13/2025	46168		Vivayic	$34,250	11/10/2025	4/10/2026	Federal	Develop and build a module in the Canvas Learning Management system.	Zainab Rida
11/13/2025	46171		Leadership Harbor	$11,570	11/10/2025	6/30/2026	Federal	Deliver a high-energy interactive leadership development series.	Katie Graham
11/13/2025	46169		Gee Whiz Education	$15,000	11/15/2025	11/14/2026	Federal	Provide annual subscription to the Gee Whiz Education online curriculum.	Melody Hobson
11/13/2025	46166		Rapport International	$8,500	11/1/2025	10/31/2026	Federal	Provide interpretation and translation services.	Lindy Foley
11/14/2025	46153		Baylor Evnen Wolfe & Tannehill	$49,999.99	11/5/2025	6/30/2026	Federal/General	Serve as hearing officer.	Ami Huff
11/14/2025	46154		Nancy Carley	$14,134	12/1/2025	11/30/2026	Federal/General	Conduct rating reviews.	Melody Hobson
11/17/2025	46167		Lois Hixson	$35,508.92	11/15/2025	10/31/2026	Federal	Support and coordinate FBLA competitive events.	Katie Graham
11/17/2025	46172		ESU 10	$2,160	12/1/2025	11/30/2026	General	Provide Early Learning Guidelines training.	Melody Hobson
11/17/2025	45210	AM#1	Event Combo					Increase amount/scope/consideration.	David Jespersen
11/18/2025	46174		Stephanie McDonald	$37,000	1/1/2026	12/31/2026	Federal/General	Provide coaching services and develop and deliver training.	Melody Hobson
11/20/2025	46173		Kimberly Heller	$33,508.92	11/15/2025	10/31/2026	Fedreal	Provide comprehensive support for the planning and execution of 2025-26 FFA events.	Katie Graham
11/21/2025	46178		Mike Stiehl	$10,000	1/1/2026	12/31/2026	Federal/General	Provide coaching services and develop and deliver training.	Melody Hobson
11/24/2025	46177		Smarter Learning Group	$48,000	11/21/2025	4/30/2026	Federal	Suport implementation of the family literacy strategies contained in a new implementation guide.	Zainab Rida
11/25/2025	46182		Mary Catherine Limbach	$19,600	1/1/2026	12/31/2026	Federal/General	Provide program quality observations.	Melody Hobson
11/25/2025	46123	AM#1	ESU 6					Correct contract name and address.	Lindy Foley
11/25/2025	46124	AM#1	ESU 7					Correct contract name and address.	Lindy Foley
11/26/2025	46179		Pamela Kage	$10,000	1/1/2026	12/31/2026	Federal/General	Provide coaching and training services.	Melody Hobson
12/1/2025	46175		Cindy Molina	$10,000	1/1/2026	12/31/2026	Federal/General	Provide coaching and training services.	Melody Hobson
12/1/2025	46181		Partners for Insightful Evaluation	$32,950	11/25/2025	11/24/2026	Federal	Assist with coordination of SHARP Youth Behavior and administration of school health profiles activities.	Zainab Rida
12/1/2025	46117	AM#1	LINQ					Extend date/scope.	Zainab Rida
12/2/2025	46057		OCIO	$835,871.36	7/1/2025	6/30/2026	Federal	Provide contractors.	Jill Aurand
12/1/2025	46176		ESU 2	$5,500	11/17/2025	4/10/2026	Federal	Provide consultation services for school safety related modules.	Zainab Rida
12/2/2025	46180		Heather's Behavior Support Services	$150,000	1/1/2026	12/31/2026	Federal	Provide consultation training and support to the NeMTSS SPDG and SPED teams.	Amy Rhone
12/4/2025	45203	AM#1	Stephanie McDonald					Consideration (increase expenses/decrease services).	Melody Hobson
12/8/2025	46183		Student1	$32,000	1/1/2026	6/30/2026	General	Provide technical consultation.	Lane Carr
12/9/2025	46132	AM#1	Education Resource Strategies					Consideration (correct contract budget)	Shirley Vargas
12/10/2025	46185		UNL	$12,500	12/5/2025	9/30/2026	Federal	Provide evaluation services.	Zainab Rida
12/15/2025	46190		NE FFA Association	$7,000	12/15/2025	5/31/2026	General	Procure services of Technical Director to assist in planning and conducting NE FFA State Convention.	Katie Graham
12/15/2025	46120	AM#1	ESU 1					Consideration (change coordination fee amouunt/total amount).	Lindy Foley
12/15/2025	46189		Edwise	$217,300	1/1/2026	12/31/2026	General	Provide advanced support for the ADVISER system and NDE portal.	Chris Wlaschin

NDE CONTRACTS

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12/16/2025	46193		OCIO	$49,999.99	12/15/2025	12/31/2030	General	Update Nebraska school district boundary maps.	Bryce Wilson
12/16/2025	46127	AM#1	OCIO (Swetha Manne)					Extend date/increase amount.	Melody Hobson
12/16/2025	46128	AM#1	OCIO (Sushmitha Sayempu)					Extend date/increase amount.	Melody Hobson
12/16/2025	46129	AM#1	OCIO (Eric Tomasek)					Extend date/increase amount.	Amy Rhone
12/17/2025	46184		Laura Cady	$6,500	12/8/2025	11/7/2026	General	Serve as podcast host.	Melody Hobson
12/17/2025	46194		EdCount	$324,458.95	1/1/2026	9/30/2028	Federal	Project coordination for the Coherence and Alignment for Educators and Families Initiative.	Trudy Clark